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# federal register

Tuesday
June 30, 1998

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

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board is amending its rules of practice and procedure to provide notice that a judge may exclude a party, a representative, or other person from all or any portion of a Board proceeding before him or her because of misconduct. The amendment further provides procedures for a person facing exclusion to show cause why he or she should not be excluded, for an interlocutory appeal to the Board of a judge's order excluding a person, and for a motion to stay the proceeding pending the Board's decision on an interlocutory appeal of an exclusion order. The intent of the amendment is to inform parties and their representatives that MSPB judges have the authority to exclude a person from a proceeding and will exercise it when necessary to ensure that adjudication of cases proceeds expeditiously and without undue disruption.

**EFFECTIVE DATE:** June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

**SUPPLEMENTARY INFORMATION:** The Board previously published an interim rule to provide notice that a judge may exclude a party, a representative, or other person from all or any portion of a Board proceeding before him or her because of misconduct (62 FR 62689, November 25, 1997). The interim rule requested public comments and allowed 60 days, until January 26, 1998, for receipt of such comments.

Comments were received from two practitioners before the Board. Both commenters recommended that the interim rule be amended to provide: (1) an opportunity for the person facing exclusion to show cause why he or she should not be excluded from the proceeding; and (2) automatic Board review of a judge's exclusion order upon the filing of a motion for certification of the order as an interlocutory appeal. In the interest of due process, the Board has adopted both of these recommendations in the final rule. Subsection 1201.31(d)(2) in the interim rule has been replaced by subsections 1201.31(d)(2) and (d)(3) in the final rule. The former prescribes procedures for issuance of a show cause order and for a response to such an order, while the latter provides procedures for the certification of an interlocutory appeal.

One commenter recommended that the interim rule be amended to provide for a stay of the proceeding by a single Board member where a judge's exclusion order has been certified as an interlocutory appeal to the Board. The Board has not adopted this specific recommendation but, instead, has added new language at subsection 1201.31(d)(4)(ii) providing that where an exclusion order has been certified to the Board as an interlocutory appeal, the judge or the Board may stay the proceeding. The provision also permits a party to move for a stay of the proceeding. This approach preserves the Board's discretion to control the conduct of the proceeding and to determine whether, under the particular circumstances of the case, a stay would serve the interests of the parties. There has been no change in the interim rule's requirement that where the judge excludes a party's representative, the party be given a reasonable time to obtain another representative; see subsection 1201.31(d)(4)(i).

In the final rule, the Board also has amended section 1201.41(b)(7) to clarify that the authority of a judge to exclude a person from a proceeding is to be exercised as provided under section 1201.31(d).

Three other recommendations made in the public comments have not been adopted in the final rule. One commenter recommended that the Board require that all prehearing and settlement conferences be recorded and that the interim rule be amended to provide a procedure for purging a person's exclusion from a proceeding from the record. The burden of implementing the former recommendation in over 8,000 prehearing conferences each year would far exceed the anticipated benefit, given that misconduct at that stage occurs infrequently. In addition, recording conferences could have the effect of inhibiting free discussion of settlement terms during the course of a settlement conference. The Board concludes that the decision to record a conference is best left to the judge's discretion. As to purging the record, the Board has determined that a special procedure is unnecessary; a motion could be filed in an appropriate case. The other commenter recommended that a procedure be established outside the context of adjudication of a specific case for filing a complaint against an administrative judge. This recommendation is outside the scope of the present rule. The Board, however, has referred the recommendation to its Director, Office of Regional Operations, for review and a determination as to whether a demonstrated need for such a complaint procedure has been established.

The Board has determined that one further change should be made in the interim rule in the interest of clarity. In subsection 1201.31(d)(1), the phrase, ''misbehavior that obstructs the hearing,'' has been replaced by ''conduct that is prejudicial to the administration of justice.'' The new language incorporates the standard established by the American Bar Association (ABA) *Model Rules of Professional Conduct* (Rule 8.4(d)), which has been adopted by over forty state bars and construed by the courts. See *Howell* v. *State Bar*, 843 F.2d 205, 208 (5th Cir.), cert. denied, 488 U.S. 982 (1988) (holding that the phrase ''prejudicial to the administration of justice'' is neither overbroad nor vague on its face as case law, court rules, and the ''lore of the profession'' provide sufficient guidance).

Finally, subsection 1201.31(d)(4) in the interim rule has been renumbered 1201.31(d)(5).

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

**List of Subjects in 5 CFR Part 1201**

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board adopts as final its interim rule published at 62 FR 62689, November 25, 1997, with the following changes:

1. Section 1201.31(d), as added by the interim rule, is revised to read as follows:

**§ 1201.31 Representatives.**

* * * * *

(d)(1) A judge may exclude a party, a representative, or other person from all or any portion of the proceeding before him or her for contumacious misconduct or conduct that is prejudicial to the administration of justice.

(2) When a judge determines that a person should be excluded from participation in a proceeding, the judge shall inform the person of this determination through issuance of an order to show cause why he or she should not be excluded. The show cause order shall be delivered to the person by the most expeditious means of delivery available, including issuance of an oral order on the record where the determination to exclude the person is made during a hearing. The person must respond to the judge's show cause order within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the order, unless the judge provides a different time limit, or forfeit the right to seek certification of a subsequent exclusion order as an interlocutory appeal to the Board under paragraph (d)(3) of this section.

(3) When, after consideration of the person's response to the show cause order, or in the absence of a response to the show cause order, the judge determines that the person should be excluded from participation in the proceeding, the judge shall issue an order that documents the reasons for the exclusion. The person may obtain review of the judge's ruling by filing, within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the ruling, a motion that the ruling be certified to the Board as an interlocutory appeal. The judge shall certify an interlocutory appeal to the Board within one day (excluding Saturdays, Sundays, and Federal holidays) of receipt of such a motion. Only the provisions of this paragraph apply to interlocutory appeals of rulings excluding a person from a proceeding; the provisions of §§ 1201.91 through 1201.93 of this part shall not apply.

(4) A proceeding will not be delayed because the judge excludes a person from the proceeding, except that:

(i) Where the judge excludes a party's representative, the judge will give the party a reasonable time to obtain another representative; and

(ii) Where the judge certifies an interlocutory appeal of an exclusion ruling to the Board, the judge or the Board may stay the proceeding *sua sponte* or on the motion of a party for a stay of the proceeding.

(5) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

2. Section 1201.41(b)(7), is revised to read as follows:

**§ 1201.41 Judges.**

* * * * *

(b) * * *

(7) Exclude any person from all or any part of the proceeding before him or her as provided under § 1201.31(d) of this part;

* * * * *

Dated: June 22, 1998.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 98–16930 Filed 6–29–98; 8:45 am]

BILLING CODE 7400–01–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 29, 31, 32, 36, 51, 52, 53, 54, 56, 58, 70, and 160

**[Docket Number FV–95–303]**

### Removal of U.S. Grade Standards and Other Selected Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting two interim final rules concerning removal of voluntary U.S. grade standards and other selected regulations from the Code of Federal Regulations (CFR). This action is part of the National Performance Review Program to eliminate unnecessary regulations and improve those that remain in force.

**EFFECTIVE DATE:** July 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, USDA, AMS, Room 2085–S, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 690–0262.

**SUPPLEMENTARY INFORMATION:** An interim final rule was published in the **Federal Register** on December 4, 1995. That rule removed most of the voluntary U.S. grade standards and other selected regulations covering a number of agricultural commodities (dairy products, tobacco, wool, mohair, fresh and processed fruits and vegetables, livestock, meats and meat products, eggs, and poultry and rabbit products) from the CFR. A second interim final rule was published on August 13, 1997 which: removed from the CFR those standards that had been retained pending completion of rulemaking at the time an interim final rule was published on December 4, 1995 which removed most of the U.S. standards from the CFR; reinstated the U.S. standards for Wisconsin Cigar-Binder Tobacco, and regulations related to the purchase of samples of wool and of mohair grades; and, lastly added a new part titled ''Procedures by Which the Agricultural Marketing Service Develops, Revises, Suspends, or Terminates Voluntary Official Grade Standards.'' These procedures were first discussed in the original interim rule and further developed and published in the August 13, 1997 interim final rule providing specifics as to the procedures that AMS will follow when developing, revising, suspending, or terminating voluntary U.S. grade standards. The Department is making final the December 4, 1995, interim final rule, and the August 13, 1997, interim final rule. This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

**Executive Order 12866**

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

**Effect on Small Entities**

This action was reviewed under the Regulatory Flexibility Act (RFA) (5

U.S.C. 601 *et seq.*). The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The United States standards issued or revised pursuant to the Agricultural Marketing Act, and issued thereunder, are administered under the direction of the Administrator of AMS and, as in the past, will be based on input from interested parties, including various industries which are mostly comprised of small entities as defined by the Small Business Administration (13 CFR 121.601). Other users of the various standards are government agencies including USDA's Farm Services Agency and the Foreign Agricultural Service.

Removal of voluntary standards and other selected regulations covering a number of agricultural commodities from the CFR is expected to benefit the affected industries because it will provide for more timely improvement in the standards in accordance with the published procedures. Notice of any actions as to the development, revision, suspension or termination of U.S. standards will be published in the **Federal Register** with request for comment to ensure that all interested parties, including small businesses as well as the general public, have an opportunity to have their views considered regarding any actions taken concerning the U.S. grade standards. This rule will specify a new CFR part titled ''Procedures by Which the Agricultural Marketing Service Develops, Revises, Suspends, or Terminates Voluntary Official Grade Standards.'' These procedures reflect the steps that were discussed in the original interim final rule concerning the procedures that AMS will follow when developing, revising, suspending, or terminating U.S. grade standards.

## Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act, the information collection requirements contained in the provisions have been previously approved by the Office of Management and Budget.

## Background

The Secretary of Agriculture is authorized under various statutes to provide various services to provide Federal grading/certification services and to develop and establish efficient marketing methods and practices of agricultural commodities. For more than 75 years, AMS has facilitated the marketing of agricultural commodities by developing official U.S. grade standards which provide a uniform language that may be used to describe the characteristics of more than 450 commodities as valued by the marketplace. These standards are widely used in private contracts, government procurement, marketing communication and, for some commodities, consumer information.

Although use of the U.S. standards is usually voluntary, they have through the years been promulgated as regulations and codified in the CFR. Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have often out paced the revision of existing or, the issuance of new regulations. As a result, the marketplace has been in some instances burdened with outdated trading language. The President's regulatory review initiative provided the impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers by reducing the regulatory burden. As part of this initiative, AMS determined that certain regulations that were in the CFR which could be administered under the authority of AMS should be removed from the CFR.

With this objective, on December 4, 1995, AMS published an interim final rule with a request for comments that removed most of the voluntary U.S. standards and related regulations from the CFR. That action included all of the standards except those that at the time were in rulemaking, incorporated by reference in marketing orders/agreements appearing at 7 CFR Parts 900 through 999, or those used to implement government price supports. Those grade standard regulations have remained in the CFR, even though the text will also be available as AMS standards along with all other grade standards.

On March 11, 1996, in response to requests by representatives of the dairy and meat industries, USDA published a notice in the **Federal Register** that it would reopen and extend the comment period until July 10, 1996. The industry association comments asked for more time to evaluate how the changes AMS was initiating would impact their respective industries.

Twenty one comments were received from interested persons in connection with the interim final rule. Those commenting included representatives of trade associations, a food processor, a state department of agriculture and other interested persons. The majority of comments were commodity specific and were addressed on an AMS program basis with regard to the appropriate commodity topic.

One comment expressed its concern about the process AMS would follow with regard to drafting new or revising existing standards and wanted assurance that AMS would continue to solicit input from industry when developing and revising U.S. grade standards.

Taking into account the various comments received in response to the request for comment on the December 4, 1995 interim final rule, AMS prepared a second interim final rule which was published in the **Federal Register** on August 13, 1997. That rule addressed by Program and commodity the specific concerns or comments from industry.

One comment was received in response to the August 13, 1997, interim final rule. The American Meat Institute stated that their ''* * * initial reservations to the December 1995 version of the rule regarding the ability of industry to fully participate in the development of future changes to grade standards appear to have been resolved. * * *'' The August 13, 1997, interim final rule codified in Part 36 of 7 CFR procedures that AMS will follow when developing, revising, suspending, or terminating U.S. grade standards.

Further, during the period of time since the comment period ended, AMS has had an opportunity to revise several grade standards using the procedures that were established under Part 36. At this time AMS is confident that the procedures effectively provide for public input.

This action will make final those regulations. As has been longstanding practice, the standards for the various commodities will be administered by the respective commodity programs within AMS. Also, AMS has had time to evaluate the effectiveness of procedures that were published in Part 36 and believes that they are serving their intended purposes. Accordingly, it is appropriate that the provisions of the December 4, 1995, interim final rule, and the August 13, 1997, interim final rule be made final, without change.

## List of Subjects

*7 CFR Part 29*

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

*7 CFR Part 31*

Wool.

*7 CFR Part 32*

Mohair.

*7 CFR Part 36*

Administrative practice and procedure, Agricultural commodities, Food grades and standards, Reporting and recordkeeping requirements.

*7 CFR Part 51*

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

*7 CFR Part 52*

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

*7 CFR Part 53*

Cattle, Hogs, Livestock, Sheep.

*7 CFR Part 54*

Food grades and standards, Food labeling, Meat and meat products.

*7 CFR Part 56*

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

*7 CFR Part 58*

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

*7 CFR Part 70*

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

*7 CFR Part 160*

Administrative practice and procedure, Advertising, Forests and forest products, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

**PART 29—TOBACCO INSPECTION**

**PART 31—WOOL STANDARDS**

**PART 32—MOHAIR STANDARDS**

**PART 36—PROCEDURES BY WHICH THE AGRICULTURAL MARKETING SERVICE DEVELOPS, REVISES, SUSPENDS, OR TERMINATES VOLUNTARY OFFICIAL GRADE STANDARDS**

**PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS [1] [2] (INSPECTION, CERTIFICATION, AND STANDARDS)**

**PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS [3]**

**PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)**

**PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)**

**PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS**

**PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS [4]**

**PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES**

**PART 160—REGULATIONS AND STANDARDS FOR NAVAL STORES**

Accordingly the interim final rule amending 7 CFR Parts 29, 31, 32, 51, 52, 53, 54, 56, 58, 70, and 160, which was published at 60 FR 62172 on December 4, 1995, and the interim final rule amending 7 CFR Parts 29, 31, 32, 36, 52, 53, 54, and 58, which was published at 62 FR 43430 on August 13, 1997, are adopted as final rules, without change.

Dated: June 24, 1998.

**Enrique E. Figueroa,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 98–17349 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–02–P

[1] Among such other products are the following: Raw nuts, Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

[2] None of the requirements in the regulations of this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered in the regulations in this part.

[3] Among such other processed food products are the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea; cocoa; coffee; spices; condiments.

[4] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### 7 CFR Parts 800 and 801

**RIN 0580–AA62**

### Official Testing Service for Corn Oil, Protein, and Starch

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

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

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is extending the use of the currently approved near-infrared spectroscopy (NIRS) analyzers in its official inspection program to include testing of corn for oil, protein, and starch content. GIPSA is incorporating by reference the Corn Refiners Association Method A–20, Starch method, into the regulations and will use it as the chemical reference method for determining the starch content in corn. To recover the cost of providing this service, GIPSA is establishing a fee identical to the fees already established for other near-infrared spectroscopy measurements (wheat protein and soybean oil and protein). GIPSA is offering this service to meet a market demand for reliable official testing procedures created by anticipated increases in high-oil corn (HOC) production.

**DATES:** This interim rule is effective July 1, 1998. To be assured of consideration, written comments must be filed before July 30, 1998.

The incorporation by reference of Analysis for Starch in Corn, Method A–20, 2nd revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc., listed in the rule is approved by the Director of the Federal Register as of July 1, 1998.

**ADDRESSES:** Written comments must be sent to Sharon Vassiliades, GIPSA, USDA, STOP 3649, Washington, DC 20250–3649; FAX to (202) 720–4628; or e-mail svassili@fgisdc.usda.gov.

All comments received will be made available for public inspection in Room 0623, USDA South Building, 1400 Independence Avenue, SW, Washington, DC, during business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** John Giler, GIPSA, USDA, Room 1661–S, STOP 3632, Washington, DC, 20250–3632; telephone (202) 720–0252; or E-mail jgiler@fgisdc.usda.gov.

**SUPPLEMENTARY INFORMATION:**

## Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

## Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

## Effect on Small Entities

The Administrator of GIPSA has determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule establishes tolerances to expand the use of currently approved near-infrared spectroscopy analyzers to test corn for oil, protein, and starch content and to establish a fee identical to the fees already established for wheat protein and soybean oil and protein testing services. Currently, near-infrared spectroscopy analyzers are being used to determine protein in wheat and protein and oil in soybean in both domestic and export markets. There are 57 official agencies (49 private entities, 8 States) designated by GIPSA to perform official grain inspection services. In addition, there are 8 delegated States. Most of the agencies could be considered small entities under Small Business Administration criteria.

The extent to which these agencies will choose to provide this service is difficult to quantify because GIPSA is offering this service on a request basis and locations where service is requested infrequently may make arrangements with a neighboring agency to provide the service (7 CFR 800.196(g)(1)). GIPSA believes that offering this service would have a beneficial effect on those agencies electing to provide the service.

For the 1998 crop year, the U.S. Feed Grains Council's production information estimated that approximately 1,250,000 acres were planted in high-oil corn, of which 40 to 50 percent is under contract. Currently, producers, grain handlers, exporters, and feedlot operators rely primarily on private laboratories to determine percent oil, protein, and starch in corn. Many of the producers, grain handlers, exporters, and feedlot operators may be considered small entities under Small Business criteria. Further, grain handlers and exporters are using this information to determine value and premiums. The extent to which these entities will request the official testing of corn for oil, protein, and starch or the impact of offering this service is difficult to quantify. GIPSA believes that corn producers, feedlot operators, grain handlers, and exporters will rely on the official system to provide reliable testing procedures and accurate results that the market can rely on to negotiate price, value, and premium.

Fees will be charged for these official services. The fees charged by GIPSA will be $1.50 per test when the test is performed at the applicant's facility, $8.00 per test if the test is performed elsewhere, and $15.75 for an appeal. These fees are the same as fees charged for similar tests and their impact on applicants for services will vary depending upon usage since these tests are on a request basis.

## Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Parts 800 and 801 was previously approved by OMB under control number 0580–0013 and will not be affected by this rule.

## Background

In its 1996–97 report, Value-Enhanced Corn Quality Report, dated April 1997, the U.S. Feed Grains Council estimated that value-enhanced corn (VEC) was produced on 2.3 to 2.8 million acres (representing 3.2 to 3.8 percent of the U.S. harvested acreage). VEC includes waxy corn, high-lysine and other essential amino acid corn, hard endosperm corn, popcorn, sweet corn, white corn, and high-oil corn. The report projects the U.S. acreage of VEC to remain essentially unchanged, with the exception of high-oil corn, which is considered the fastest growing VEC produced in the marketplace. The report stated that more than 1 million acres of high-oil corn is projected for the 1998 crop year (up from virtually none in 1993), is expected to more than double (2.5 million acres) in 1999, and to reach 3 million acres by 2000. High-oil corn will continue to be a significant part of the VEC produced and traded in the marketplace.

High-oil corn is used by livestock feeders to replace animal fat previously added to livestock rations and to help the animals gain weight more quickly. U.S. No. 2 corn typically averages less than 4.5 percent oil content, while high-oil corn can contain up to 8.0 percent. At this time, depending on the oil content, high-oil corn premiums range from 5 to 24 cents per bushel. High-oil corn is almost exclusively grown through contracts with livestock feeders or companies that will export the grain.

For several years, high-oil corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. GIPSA's goal is to provide the corn industry with accurate results that the market can rely on to negotiate price, value, and premium.

GIPSA investigated a near-infrared spectroscopy (NIRS) calibration for use with currently approved near-infrared transmittance (NIRT) analyzers using 92 corn samples representing oil, protein, and starch ranges of 4.0 to 8.5 percent, 8.0 to 12.0 percent, and 64 to 72 percent (dry basis), respectively. Calibration performance data were statistically analyzed for the sample set. The standard deviation of differences (SDD) between near-infrared spectroscopy oil values and official solvent oil extraction reference results, was 0.44. A comparison of NIRT analyzer protein values and official combustion nitrogen analyzer reference results yielded an SDD of 0.40. The SDD between near-infrared spectroscopy analyzer starch predictions and reference values obtained using Corn Refiners Association Method A–20, was 2.20. GIPSA has determined that this level of accuracy is commensurate with prospective official customer needs. To further assure the performance of the NIRT analyzer for corn measurements, GIPSA is establishing the maintenance tolerances for corn oil content at ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for protein content at ±0.30 percent mean deviation from the national standard NIRS instruments, which are

referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for starch content at ±0.35 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A–20.

This rule incorporates by reference the Corn Refiners Association Method A–20, Starch method, into the regulations. GIPSA will use the Starch method as the chemical reference method for determining the starch content in corn.

GIPSA is announcing the implementation of corn oil, protein, and starch testing services as an official criterion effective July 1, 1998. Upon a request for service, official inspection personnel will determine corn oil, protein, and starch under the authority of the USGSA. Percent oil, protein, and starch will be reported to the nearest tenth percent on a dry matter basis (zero moisture basis) unless another moisture basis is requested.

GIPSA is required to collect fees for providing official testing service to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine oil, protein, and starch in corn using the approved NIRT analyzers are the same as those required for NIRT wheat protein or NIRT soybean oil and protein determinations. Therefore, GIPSA has decided to collect fees identical to the fees established for NIRT wheat protein or NIRT soybean oil and protein testing services. These fees will be $1.50 per test when the service is performed at an applicant's facility in an onsite FGIS laboratory; $8.00 per test when an original inspection service is performed at a location other than an applicant's facility in an FGIS laboratory; and $15.75 per test when an appeal inspection service is performed at a location other than an applicant's facility in an FGIS laboratory.

GIPSA is revising § 800.71 to establish fees for corn oil, protein, and starch testing services.

GIPSA is also revising § 801.7 to establish tolerances for corn oil, protein, and starch analyzers.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is unnecessary and contrary to 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) this rule merely expands utilization of currently approved technology to offer additional services to the industry and establishes tolerances for that service; (2) the corn market year begins July 1, 1998, and the service should be in effect to allow its use at the beginning of the marketing year; and (3) this rule provides a 30-day opportunity for comment and all written comments timely received will be considered prior to finalization of the rule.

A 30-day comment period is deemed appropriate because the corn market year begins on July 1, 1998, and this rule should be made final as soon as possible during the beginning of the 1998 year.

**List of Subjects in 7 CFR Parts 800 and 801**

Grains, Incorporation by reference.

For the reasons set out in the preamble, 7 CFR Parts 800 and 801 are amended as follows:

## PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Table 1(2) (i through x) and adding (xi) and revising Table 2(1)(v) and (2)(ii) in Schedule A of paragraph (a) to read as follows:

**§ 800.71 Fees Assessed by the Service.**

(a) * * *

**Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States**

**Table** 1.—* * *

| | |
|---|---|
| (2) * * * | |
| (i) Aflatoxin (other than Thin Layer Chromatography) | $8.50 |
| (ii) Aflatoxin (Thin Layer Chromatography method) | 20.00 |
| (iii) Corn oil, protein, and starch (one or any combination) | 1.50 |
| (iv) Soybean protein and oil (one or both) | 1.50 |
| (v) Wheat protein (per test) | 1.50 |
| (vi) Sunflower oil (per test) | 1.50 |
| (vii) Vomitoxin (qualitative) | 7.50 |
| (viii) Vomitoxin (quantitative) | 12.50 |
| (ix) Waxy corn (per test) | 1.50 |
| (x) Fees for other tests not listed above will be based on the lowest noncontract hourly rates. | |
| (xi) Other services | |
| (a) Class Y Weighing (per carrier) | |
| (1) Truck/container | .30 |
| (2) Railcar | 1.25 |
| (3) Barge | 2.50 |

* * * * *

**Table** 2.—* * *

| | |
|---|---|
| (1) * * * | |
| (v) Additional tests (excludes sampling) | |
| (a) Aflatoxin (per test—other than TLC method) | $25.50 |
| (b) Aflatoxin (per test—TLC method) | 101.50 |
| (c) Corn oil, protein, and starch (one or any combination) | 8.00 |
| (d) Soybean protein and oil (one or both) | 8.00 |
| (e) Wheat protein (per test) | 8.00 |
| (f) Sunflower oil (per test) | 8.00 |
| (g) Vomitoxin (qualitative) | 26.00 |
| (h) Vomitoxin (quantitative) | 31.00 |
| (i) Waxy corn (per test) | 9.25 |
| (j) Canola (per test—00 dip test) | 9.25 |
| (k) Pesticide Residue Testing [3]. | |
| (1) Routine Compounds (per sample) | 200.00 |
| (2) Special Compounds (per service representative) | 100.00 |
| (l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1. | |
| (2) * * * | |
| (ii) Additional tests (assessed in addition to all other applicable fees) | |
| (a) Aflatoxin (per test, other than TLC) | $25.75 |
| (b) Aflatoxin (TLC) | 111.00 |
| (c) Corn oil, protein, and starch (one or any combination) | 15.75 |
| (d) Soybean protein and oil (one or both) | 15.75 |
| (e) Wheat protein (per test) | 15.75 |
| (f) Sunflower oil (per test) | 15.75 |
| (g) Vomitoxin (per test—qualitative) | 36.00 |
| (h) Vomitoxin (per test—quantitative) | 41.00 |
| (i) Vomitoxin (per test—HPLC Board Appeal) | 128.00 |
| (j) Pesticide Residue Testing [3]. | |
| (1) Routine Compounds (per sample) | 200.00 |
| (2) Special Compounds (per service representative) | 100.00 |
| (k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1. | |

* * * * *

* * * * *

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

* * * * *

## PART 801—[AMENDED]

3. The authority for Part 801 continues to read:

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71, *et seq.*)

4. Section 801.7 is revised to read as follows:

**§ 801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.**

(a) *Reference methods.* (1) The chemical reference protein determinations used to reference and calibrate official NIRS instruments shall be performed in accordance with ''Comparison of Kjeldahl Method for Determination of Crude Protein in Cereal Grains and Oilseeds with Generic Combustion Method: Collaborative Study,'' July/August 1993, Ronald Bicsak, Journal of AOAC International Vol. 76, No. 4, 1993, and subsequently approved by the AOAC International as the Combustion method, AOAC International Method 992.23. 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 Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153–1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(2) The chemical reference starch determination used to reference and calibrate official NIRS instruments shall be performed in accordance with the Corn Refiners Association Method A–20, Analysis for Starch in Corn, Second revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc. 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 Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153–1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(b) *Tolerances* (1) *NIRS wheat protein analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of wheat protein content shall be ±0.15 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(2) NIRS soybean oil and protein analyzers. The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of soybean oil shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; and for determination of protein content shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(3) *NIRS corn oil, protein, and starch analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of corn oil shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for determination of protein content shall be ±0.30 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for determination of starch content shall be ±0.35 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A–20.

Dated: June 19, 1998.

**David R. Shipman,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 98–16966 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–EN–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AEA–07]**

## Amendment to Class E Airspace; Farmville, VA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Farmville, VA. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Farmville Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 21 SIAP to Farmville Municipal Airport.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### History

On May 15, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Farmville, VA, was published in the **Federal Register** (63 FR 27015). The development of the GPS RWY 21 SIAP for Farmville Municipal Airport requries the amendment of the Class E airspace at Farmville, VA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IRF operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

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

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL 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 Rule

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

## PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA VA E5 Farmville, VA [Revised]**

Farmville Municipal Airport, VA
(Lat. 37°21′27″N., long. 78°26′16″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Farmville Municipal Airport.

* * * * *

Issued in Jamaica, New York on June 15, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–17361 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AEA–02]**

## Amendment to Class E Airspace; Philadelphia, PA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Philadelphia, PA. The amendment of a Standard Instrument Approach Procedure (SIAP) based on the Instrument Landing System (ILS) at Philadelphia International Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the ILS Runway (RWY) 9R SIAP to Philadelphia International Airport.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### History

On May 6, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Philadelphia, PA, was published in the **Federal Register** (63 FR 24995). The amendment of the ILS RWY 94 SIAP for Philadelphia International Airport requires the amendment of the Class E airspace at Philadelphia, PA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

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

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending from 700 feet AGL 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 Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Philadelphia, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the ILS RWY 9R SIAP to Philadelphia International Airport.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

## PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA PA E5 Philadelphia, PA [Revised]**

Philadelphia International Airport, PA
(Lat. 39°52′13″N., long. 75°14′42″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Philadelphia International Airport extending clockwise from the 095° bearing from the airport to the 225° bearing from the airport and within a 15-mile radius of Philadelphia International Airport extending from the 225° bearing from the airport clockwise to the 095° bearing from the airport, excluding the portions that coincide with the Berlin, NJ, Cross Keys, NJ, Wrightstown, NJ, Toughkenamon, PA, North

Philadelphia, PA, and Wilmington, DE, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on June 15, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–17362 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## 15 CFR Part 280

**[Docket Number: 980623159–8159–01]**

**RIN 0693–AB47**

## Implementation of the Fastener Quality Act

**AGENCY:** National Institute of Standards and Technology, United States Department of Commerce.

**ACTION:** Final rule and extension of implementation date.

**SUMMARY:** The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, under authority delegated by the Secretary of Commerce, and pursuant to Section 15 of the Fastener Quality Act (Act), has determined that by July 26, 1998, the current implementation date of the Act, there will not be a sufficient number of laboratories accredited to perform the volume of inspection and testing required by the Act. Accordingly, the Director is extending the implementation date of the Act until October 25, 1998 and amending the existing regulations to reflect the new implementation date.

**DATES:** Effective June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. Subhas G. Malghan, FQA Program Manager, Technology Services, National Institute of Standards and Technology, Building 820, Room 306, Gaithersburg, MD 20899, telephone number (301) 975–5120.

**SUPPLEMENTARY INFORMATION:** The Fastener Quality Act (Act), (Pub.L. 101–592 as amended by Pub.L. 104–113), requires that certain fasteners sold in commerce conform to the standards and specifications to which they are represented to be manufactured and have been inspected, tested, and certified. Inspection and testing mean that the manufacturer of a lot of fasteners shall cause to be inspected and tested a representative sample of the fasteners in such a lot to determine whether the lot of fasteners conforms to the standards and specifications to which the manufacturer represents it has been manufactured. Such inspection and testing shall be performed by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under Section 6 of the Act.

In accordance with Section 15, the requirements of the Act shall be applicable only to fasteners fabricated one hundred eighty (180) days or more after the effective date of final regulations implementing the Act. The Secretary may extend the implementation date upon a determination that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required.

The final rule implementing the Fastener Quality Act became effective on November 25, 1996, and was to apply to fasteners manufactured on or after May 27, 1997, the ''implementation date''. On April 18, 1997, as permitted by Section 15 of the Act, NIST announced a one year extension of the implementation date of the Act to May 26, 1998, because there was an insufficient number of laboratories accredited to perform the volume of inspection and testing required by the Act and regulations (62 FR 19041 (1997)). During the one extension, NIST published for public comment proposed amendments to the rule implementing the Act (62 FR 47240 (1997)). On April 14, 1998, based on the public comments received, NIST published the amendments to the 1996 final rule and once again extended the implementation date of the Act (63 FR 18260 (1998)). At that time, the National Voluntary Laboratory Accreditation Program (NVLAP) and the NIST-recognized private accreditation bodies reported that although an insufficient number of laboratories was expected to be accredited by May 26, 1998, only a sixty (60) day extension appeared necessary. Based on this information, NIST extended the implementation date of the Act to July 26, 1998.

Currently, NVLAP and the private accreditation bodies have received applications from approximately 580 testing laboratories, a sufficient number for implementation of the Act. Of these, approximately 250 testing laboratories have been accredited and are listed on the NIST Accredited Laboratory List. The extension of the implementation date to October 25, 1998, will allow the remainder of the laboratories who have applies to complete the accreditation process. In addition, NIST is publishing technical amendments to section 280,12 (a), (b), and (c) to reflect the extension.

The extension of the implementation date does not affect the provisions of section 280.12(d) and (e). Fasteners manufactured after May 14, 1998 and meeting the requirements of either of these paragraphs still may be sold as FQA compliant.

In addition, the extension of the implementation date affects the Facilities self-certification provisions contained in section 280.810(c)(3). A Facility's determination whether to self-certify must now be based on whether that Facility believes its registration will be completed by October 25, 1998, the new implementation date. Such determination is within each Facility's discretion and should be based on arrangements between the Facility and its Registrar as to when the Facility's registration will be complete. However, Facilities wishing to self-certify still must submit the required items by September 30, 1998; NIST cannot legally accept self-certification paperwork after September 30, 1998. NIST cannot provide relief for Facilities whose registrations are not complete by October 25, 1998, but who failed to submit self-certification by September 30, 1998. Any self-certifications received by September 30, 1998, and acknowledged by NIST will only be effective until May 25, 1999, as stated in the existing regulations at § 280.810(c)(3)(ii).

### Additional Information

*Administrative Procedure Act*

Pursuant to authority at 5 U.S.C. 553(b)(B), the Director of NIST has determined that good cause exists to waive the requirement to provide prior notice and an opportunity for public comment for this action as such procedures are unnecessary. The procedures are unnecessary because this action merely makes technical amendments to the existing regulations to comport with the exercise of statutory authority to extend the implementation date. Since this action is not a substantive change to the regulations, this rule is not subject to a thirty day delay in its effectiveness.

*Executive Order 12866*

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

*Regulatory Flexibility Act*

Since this action is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. § 553, or any other law,

it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

**List of Subjects in 15 CFR Part 280**

Business and industry, Fastener industry, Imports.

Dated: June 25, 1998.

**Robert E. Hebner,**

*Acting Deputy Director, National Institute of Standards and Technology.*

## PART 280—FASTERNER QUALITY

For the reasons set forth in the preamble, Title 15 of the Code of Federal regulations part 280 is amended as follows:

1. The authority for part 280 continues to read as follows:

**Authority:** Sec. 13 of the Fastener Qaulity Act (Pub. L. 101–592, as amended by Pub. L. 104–113).

2. Section 280.12 is revised to read as follows:

**§ 280.12 Applicability.**

(a) The requirements of the Fastener Qaulity Act and this report shall be applicable only to fasteners manufactured on or after October 25, 1998.

(b) Metal manufactured prior to october 25, 1998 may not be used to manufacture fasteners subject to the Act and this part unless the metal has not tested for chemistry pursuant to § 280.15 of this part by a laboratory accredited under the Act and this part and the chemical charteristics of the metal conform to those required by the standards and specifications.

(c) Nothing in the Act and this part prohibits selling finished fasteners manufacture prior to october 25, 1998 or representing that such fasteners meet standards and specifications of a consensus standards organization or a government agency.

3. Section 280.602(k) is revised to read as follows:

**§ 280.602 Violations.**

* * * * *

(k) *Sale of fasteners manufactured prior the implementation date as compliant with the Act.* No person shall represent, sell, or offer for sale fasteners manufactured prior to October 25, 1998 as being in conformance with the Act of this part except as provided for in § 280.12 (d) or (e) of this part.

* * * * *

4. Section 280.810(c)(3)(i) is revised to read as follows:

**§ 280.810 Listing of recognized accreditors, accredited registrars, and registered facilities.**

* * * * *

(c) *List of Facilities.* * * *

(3)(i) If a Facility intends to be listed in accordance with § 280.810(c)(1) but the registration process will not be completed by October 25, 1998, the Facility may be provisionally listed on the Facilities List by providing the following to NIST on or before September 30, 1998:

(A) Certification that:

(*1*) The Facility is registered to QS–9000 or an equivalent by a quality systems registrar;

(*2*) The facility conforms to all other requirements of the Act and these regulations at the time of certification;

(*3*) If the Facility ceases to be registered to QS–9000 or an equivalent by an accredited Registrar and/or ceases to conform to any other requirement of the Act and these regulations at any time during the provisional listing period, it will notify NIST of that fact within three working days; and

(*4*) If the Facility fails to apply to an accredited Registrar for registration under the FQA within 30 days of the time the Registrar is accredited by a NIST-approved Accreditor, an authorized representative of the Facility will immediately notify NIST. (If the Facility's current Registrar decides not to seek accreditaton under the FQA, it is the Facility's responsibility to apply to another Registrary that has been approved by NIST-ABEP.);

* * * * *

[FR Doc. 98–17319 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–13–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 240, 270, and 275

**[Release Nos. 33–7548, 34–40122, IC–23272, and IA–1727; File No. S7–4–97]**

**RIN 3235–AG62; 3235–AH01**

### Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Securities and Exchange Commission is amending the definitions of ''small business'' and ''small organization'' that are used in connection with Commission rulemaking under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933 regarding regulatory requirements applicable to investment companies, investment advisers, exchanges, securities information processors, transfer agents and issuers, and broker-dealers. These definitions are used specifically for purposes of the Regulatory Flexibility Act, which requires the Commission to consider the impact of its regulations on small entities. The amendments to these definitions reflect recent changes in the law as well as changes in the securities markets over the past decade, including technological innovations and increased business relationships among participants in the securities industry.

**EFFECTIVE DATE:** The rule amendments will become effective July 30, 1998.

**FOR FURTHER INFORMATION CONTACT:**

*General*

Christopher Gilkerson, Assistant General Counsel at (202–942–0929), or Anne H. Sullivan, Senior Counsel at (202–942–0954), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–6, Washington, D.C. 20549.

*Divisions with Particular Responsibility*

Thomas M.J. Kerwin, Senior Counsel, Division of Investment Management, (definitions applicable to investment companies and investment advisers) (202–942–0690).

Glenn J. Jessee, Special Counsel, Office of the Chief Counsel, Division of Market Regulation (definitions applicable to brokers, dealers, exchanges, transfer agents and issuers, securities information processors, and broker-dealers) (202–942–0073).

**SUPPLEMENTARY INFORMATION:** The Commission is amending the definitions of ''small business'' and ''small organization'' (together, ''small business'') set forth in Rule 0–10 (17 CFR 270.0–10) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''), Rule 0–7 (17 CFR 275.0–7) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (the ''Advisers Act''), Rule 0–10 (17 CFR 240.0–10) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act''), and Rule 157 (17 CFR 230.157) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the ''Securities Act'') as those terms are used for purposes of Chapter Six of the Administrative Procedure Act, 5 U.S.C. 601 *et seq.* (the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (1980), as amended, Pub. L. No. 104–

121, Title II, Subtitle D, 110 Stat. 864 (1996) (the ''Reg. Flex. Act'')).

The Reg. Flex. Act, enacted in 1980, requires federal agencies, among other things, to consider the impact of rulemaking on entities that qualify as ''small'' under applicable standards in the Reg. Flex. Act,[1] the Small Business Act,[2] or regulations promulgated by the Small Business Administration (''SBA'').[3] In 1982, the Commission adopted definitions that it considered appropriate for issuers and other entities subject to its regulation.

On January 22, 1997, the Commission published for comment proposed amendments to its definitions of ''small business'' for purposes of the Reg. Flex. Act, when used in connection with rulemaking affecting investment companies, investment advisers, exchanges, securities information processors, transfer agents and issuers, and broker-dealers.[4] In addition to publishing the rule proposal in the **Federal Register**, the Commission posted the proposed rule changes on the small business page of the Commission's Website.[5] To give the public additional time to comment, the Commission extended the comment period for the proposed amendments.[6] The Commission received no comments on the proposal. The Commission is adopting the amendments to the ''small business'' definitions as proposed.[7] The Commission is, however, making some modifications to the ''small business'' definition of investment adviser to reflect amendments to the Investment Advisers Act enacted under the National Securities Markets Improvement Act of 1996 (the ''Improvement Act'')[8] and to simplify the definition. As required under the Reg. Flex. Act, the Commission has consulted with the SBA Office of Advocacy regarding the amendments it is adopting.[9]

## I. Background

The Reg. Flex. Act defines the term ''small entity'' as a ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[10] The definition of ''small business'' incorporates the Small Business Size Regulations (''SBA size standards'')[11] established by the SBA under the Small Business Act.[12] In addition, the Reg. Flex. Act definition of ''small business'' authorizes agencies to establish their own definitions if they determine that specialized definitions are more appropriate to the activities of the agency.[13]

As discussed in greater detail in the Proposing Release, the Commission has a longstanding commitment to understanding and addressing the concerns of small business.[14] Consistent with this commitment, in 1982, the Commission chose to adopt its own definitions of ''small business'' for purposes of Commission rulemaking after reviewing size standards adopted by the SBA.[15]

As discussed in the Proposing Release, the Commission's definitions adopted in 1982 were, in many ways, more expansive than the statutory definitions of ''small business'' and ''small organization'' in the Reg. Flex. Act. Under the Reg. Flex. Act, a business is not considered ''small'' if it is not ''independently owned and operated.''[16] The Commission's definitions went beyond the Reg. Flex. Act requirements because, for the most part, the Commission's definitions did not limit ''small businesses'' to those that were independently owned and operated. The Commission's original definitions also were broader in certain respects than the SBA size standards, which consider various limiting factors when determining if an entity is ''small.''[17] For example, the SBA size standards aggregate the interests of affiliated entities for the purpose of determining whether an entity is ''independently owned and operated,'' and thus, ''small.''[18] In determining whether entities are affiliated, the SBA size standards consider such factors as control, management, ownership, and contractual relationships.[19] In addition, the SBA may treat multiple entities that have identical or substantially identical business or economic interests as a single entity.[20] Although the Commission's current definitions in some cases address the concept of control,[21] none of the other affiliation concepts set forth in the SBA size standards were considered when the Commission originally adopted its definitions of ''small business'' in 1982.

Under the Commission's current definitions, a majority of broker-dealers and investment advisers qualify as small.[22] Some of those ''small'' broker-dealers handle customer orders in excess of $200 million from which they earn more than $6 million per year in

[1] 5 U.S.C. 603, 604.

[2] 15 U.S.C. 631 *et seq.*

[3] 13 CFR Part 121.

[4] Securities Act Release No. 7383, Exchange Act Release No. 38190, Investment Company Act Release No. 22478, Investment Advisers Act Release No. 1609, 62 FR 4106 (Jan. 28, 1997) (the ''Proposing Release'').

[5] The Commission's Website is located at http://www.sec.gov.

[6] Securities Act Release No. 7404, Exchange Act Release No. 38401, Investment Company Act Release No. 22566, Investment Advisers Act Release No. 1619, 62 FR 13356 (Mar. 20, 1997).

[7] The Commission intends to maintain its current definitions of ''small business'' as they relate to small business issuers, clearing agencies, bank municipal securities dealers, and public utility holding company systems.

[8] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[9] *See* 5 U.S.C. 601(3), 601(4).

[10] *Id.* § 601(6).

[11] 13 CFR Part 121.

[12] 15 U.S.C. 632(a)(2)(A) (SBA authority to establish standards for determining ''small business concern'').

[13] 5 U.S.C. 601(3), 601(4).

[14] *See* Proposing Release, supra note 4.

[15] The SBA adopted its size standards in 1980. Small Business Size Standards, Revisions of Methods of Establishing Size Standards and Definitions of Small Business, 45 FR 15442 (Mar. 10, 1980). The Commission determined that the SBA size standards were generally inappropriate in the context of regulations affecting securities issuers and reporting companies. *See* Proposed Definitions of ''Small Business'' and ''Small Organization'' for Purposes of the Regulatory Flexibility Act, Securities Act Release No. 6302, Exchange Act Release No. 17645, PUHCA Release No. 21970, Trust Indenture Act Release No. 619, Investment Company Act Release No. 11694, Investment Advisers Act Release No. 754, 46 FR 19251 (Mar. 30, 1981) (''1981 Proposing Release''); *see also* Final Definitions of ''Small Business'' and ''Small Organization'' for Purposes of the Regulatory Flexibility Act, Securities Act Release No. 6380, Exchange Act Release No. 18452, PUHCA Release No. 22371, Trust Indenture Act Release No. 693, Investment Company Act Release No. 12194, Investment Advisers Act Release No. 791, 47 FR 5215, 5216 (Feb. 4, 1982) (''1982 Adopting Release'').

[16] *See* 5 U.S.C. 601(4) (''small organization'' under the Reg. Flex. Act means an entity that is ''independently owned and operated and is not dominant in its field''); 15 U.S.C. 632(a)(1) (definition of ''small-business concern'' under the Small Business Act (as incorporated in the Reg. Flex. Act definition of ''small business,'' 5 U.S.C. 601(3)) means an entity that is ''independently owned and operated and * * * is not dominant in its field'').

[17] *See* SBA size standards, 13 CFR 121.102 (size eligibility provisions and standards).

[18] *Id.* § 121.103.

[19] *Id.* § 121.103(a)(1) (describing control relationships that constitute affiliation); *id.* § 121.103(a)(2) (describing factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships that SBA considers in determining whether affiliation exists).

[20] *See id.* § 121.103(a)(3).

[21] Under certain of the current definitions of ''small business'' under the Exchange Act (broker, dealer, clearing agency, municipal securities dealer, securities information processor, transfer agent), the Commission has considered control interests in determining whether an entity was ''small.'' Exchange Act Rule 0–10 (17 CFR 240.0–10). The SBA regulations also address factors of control. 13 CFR 121.103(a)(1).

[22] Under the current definitions, approximately 75 percent of investment advisers and 60 percent of registered broker-dealers qualify as ''small.'' The number of ''small'' investment advisers registered with the Commission was significantly reduced as of July 8, 1997, however, as a result of legislation that reallocated primary responsibility for regulating most smaller investment advisers to the states. *See infra* notes 45–47 and accompanying text.

revenue.[23] These entities are classified as ''small'' under current Commission rules even though they may be affiliated with larger entities that are responsible for many of the smaller firms' securities functions. Similarly, today most mutual funds are affiliated with large mutual fund families, and many investment advisers are affiliated with larger financial services firms. These relationships allow the ''small'' affiliates to rely on a larger entity that centralizes administrative and compliance systems for all affiliates, significantly reducing regulatory burdens for each individual affiliate.

A similar relationship exists between introducing broker-dealers and the large firms through which they clear securities trades. Although introducing and clearing firms share responsibility for ensuring that a customer's account is handled properly, introducing firms typically depend on clearing firms to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing the confirmation of the customer's trade. The increase in these affiliations since 1982 occurred along with tremendous growth and significant technological changes in the securities industry that facilitate such arrangements.[24] These changes in the securities industry prompted the Commission to begin reviewing certain of its ''small business'' definitions in 1995.[25]

The Commission expanded its review of ''small business'' definitions in 1996, after Congress enacted the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').[26] Among other things, SBREFA (i) imposed new obligations on the Commission and other agencies to assist small entities in understanding and complying with regulatory requirements,[27] (ii) amended the Reg. Flex. Act to allow small entities to seek judicial review of agency compliance with the Reg. Flex. Act,[28] and (iii) amended the Equal Access to Justice Act (''EAJA'') [29] by expanding the class of litigants eligible to receive EAJA awards to include small entities as defined under the Reg. Flex. Act.[30] In view of the Commission's expanded obligations under SBREFA,[31] and changes in the securities industry discussed above, the Commission is adopting amendments to certain of its ''small business'' definitions to take into account more of the factors suggested by SBA size standards in determining whether an entity qualifies as ''small.'' [32] The following sections of this release describe the amendments to specific ''small business'' definitions. The release also discusses how the amended definition of ''small business'' as it relates to investment advisers differs from the proposal and the reasons for the changes.

## II. Discussion of Amendments

### *A. Investment Companies*

The Commission is adopting, as proposed, amendments to the rule under the Investment Company Act that defines ''small business'' as applied to investment companies.[33] The current rule treats as a small business each investment company (''fund'') that has $50 million or less in assets as of the end of its fiscal year.[34] As amended, the rule generally treats a fund as a small business only if it and any group of related funds have aggregate net assets of $50 million or less.[35] The Commission estimates that approximately 400 funds will be treated as small businesses under the amended rule.

The amended rule defines a group of related funds to include two or more management companies (including any series of such a company) that hold themselves out to investors as related companies for purposes of investment and investor services, and share either a common investment adviser (or affiliated advisers) or a common administrator.[36] In the case of a unit investment trust (''UIT''), a group of related funds means two or more UITs that have a common sponsor.[37]

There is a special rule applicable to insurance company separate accounts.[38]

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[23] The revenue amount is based on information provided by broker-dealers in quarterly FOCUS reports. The amount of customer order flow is derived using revenue data in the FOCUS reports.

[24] Between 1980 and 1996, the value of public offerings (including debt and equity, but not investment company securities) increased from $58 billion to over $1 trillion. Between 1990 and 1996, the dollar volume of equity securities traded on registered national securities exchanges and Nasdaq grew 277 percent, with over $7.8 trillion traded in 1996. Assets under management by investment advisers (excluding bank advisers to registered investment companies) rose from $205 billion to over $10 trillion (a 4,778 percent increase) between 1980 and 1996. Over the same period, assets of investment companies increased 1,514 percent from $235 billion to $3.794 trillion. The number of securities firms and professionals registered with the Commission or with self-regulatory organizations has also surged. The number of broker-dealers grew, over the same period, from around 5,200 to approximately 7,760 (a 49 percent increase). In addition, technological progress has changed the securities industry. For example, advances in information technology have resulted in the proliferation of information vendors and electronic trading systems not contemplated in 1982. Since 1982, the markets have seen the development of fully automated electronic broker-dealers and exchanges, improved electronic order execution systems at broker-dealers, exchanges, and national securities associations, and improved electronic linkages among markets and between broker-dealers and their customers. These changes have created substantially deeper and more liquid markets and have made trading more immediate and less expensive for both institutional and retail customers.

[25] *See* Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulations, 60 FR 59503, 61073 (Nov. 28, 1995) (noting Division of Investment Management's consideration whether to recommend that the Commission propose amended definition of ''small entity'' in Rule 0–10 (17 CFR 270.0–10) under the Investment Company Act).

[26] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[27] *Id.* §§ 212, 213(b), 110 Stat. 858, 859.

[28] *Id.* § 242, 110 Stat. 865.

[29] 5 U.S.C. 504; 28 U.S.C. 2412.

[30] Pub. L. No. 104–121, § 232(b)(2), 110 Stat 863.

[31] The Commission is concerned that, as a result of the Commission's existing broad definitions of ''small business,'' certain of the amendments made by SBREFA could result in a significant increase in the Commission's exposure to litigation beyond that reasonably contemplated by the Reg. Flex. Act. The Commission's enforcement litigation and other litigation matters have increased in recent years. In light of increased exposure to litigation under SBREFA, which could further strain the Commission's limited budget, the Commission believes it is appropriate to revise certain small business definitions under its own rules to reflect better the policies underlying the Reg. Flex. Act and the SBA size standards.

[32] In instances where the Commission has already instituted a rulemaking proceeding and prepared an Initial Regulatory Flexibility Analysis (IRFA) under the old small business definitions, those definitions will apply for purposes of any final rulemaking and the Commission's preparation of the required Final Regulatory Flexibility Analysis (FRFA).

[33] *See* amended Rule 0–10 (17 CFR 270.0–10); Proposing Release, *supra* note 4.

[34] Rule 0–10 (17 CFR 270.0–10).

[35] Amended Rule 0–10. Conforming amendments to Rule 157(b) (17 CFR 230.157(b)) under the Securities Act and Rule 0–10(b) (17 CFR 240.0–10(b)) under the Exchange Act adopt the same small business definition of an investment company. To facilitate the efficient computation of net assets, the amended rule provides that the Commission may base its count of the assets of any group of related funds on the net assets of each fund (or series) in the group at the end of each fund's fiscal year, as generally reported in Form N–SAR. Amended Rule 0–10(c) (17 CFR 270.0–10(c)); *see* 17 CFR 274.101; Form N–SAR, Item 74T. As under the current rule, small business status will be determined on a company-by-company basis rather than a series-by-series basis (even in the unusual circumstances when some series of a multi-series company may not constitute a group of related funds with respect to other series).

[36] Amended Rule 0–10(a)(1) (17 CFR 270.0–10(a)(1)). Under this definition, the assets to be aggregated for a multi-series company would include those of all series of the company, and of any separately organized company (and its series) in a related group.

[37] Amended Rule 0–10(a)(2) (17 CFR 270.0–10(a)(2)). A UIT holds a fixed portfolio of securities deposited by its sponsor, and does not have an investment adviser. *See generally* Section 4(2) of the Investment Company Act (15 U.S.C. 80a–4(2)). The amended rule does not define a group of related funds as applied to a face amount certificate company, another type of fund, which will continue to be subject to the $50 million test on a company-by-company basis.

[38] Separate accounts contain assets used to fund certain insurance and investment contracts between

Because state law generally treats separate account assets as the property of the sponsoring insurance company, the amended rule aggregates each separate account's assets with the assets of its sponsor, including other sponsored accounts.[39] As a result, the Commission expects few, if any, separate accounts to be treated as small businesses.

*B. Investment Advisers*

The Commission is adopting proposed amendments to the rule under the Advisers Act that defines ''small business'' as applied to investment advisers, with changes designed to reflect recent legislation and to simplify the proposed amendments.[40] The current rule defines as a small business each investment adviser that either (i) manages assets (''client assets'') with a total value of $50 million or less as of the end of its most recent fiscal year, and performs no other advisory services; or (ii) performs other advisory services, manages client assets of $50 million or less if it manages client funds, and has assets related to its advisory business (''business assets'') that do not exceed $50,000.[41] As amended, Rule 0–7 treats an adviser as a small business if (i) neither the adviser nor an adviser it controls, is controlled by, or is under common control with has $25 million or more of assets under management, and (ii) neither the adviser nor any person it controls, is controlled by, or is under common control with has $5 million or more of total assets.[42]

In the Proposing Release, the Commission requested comment whether, in light of the Improvement Act's transfer of primary responsibility for regulating small advisers to the states, a threshold of $25 million for client assets under management would be more appropriate than the $50 million threshold.[43] The Commission also requested comment whether the $50,000 threshold for business assets continued to be appropriate.[44] The Commission has now determined that the $25 million client asset threshold coupled with a $5 million total assets test more appropriately reflects the Improvement Act's allocation of regulatory responsibilities between the Commission and the states.

The Improvement Act reallocated regulatory responsibility over investment advisers between the Commission (which is now responsible for larger advisers with national businesses) and state securities regulators (which are now responsible for smaller advisers with essentially local businesses).[45] To effect this division of responsibility, Congress generally prohibited advisers with less than $25 million of assets under management from registering with the Commission after July 8, 1997.[46] Thus, Congress viewed ''small advisers'' as those having less than $25 million of assets under management.[47] The Commission believes that the definition of small business as applied to investment advisers for Reg. Flex. Act purposes should be revised to reflect the threshold that Congress used in the Improvement Act for similar purposes. Therefore, the Commission is reducing the threshold to $25 million of assets under management.[48]

Under the proposed amendments, an adviser having less than $50 million of client assets would *not* have been considered a small business if the adviser (i) had substantial business assets or (ii) was affiliated with a large firm.[49] Amended Rule 0–7 reflects the policy of extending an asset test to all investment advisers, but substantially simplifies the proposed amendments and reduces the amount of information the Commission must collect to determine whether an adviser is a small business.[50] As adopted, the rule excludes from the definition of small business an adviser having less than $25 million of assets under management if, based on information filed with the Commission, the adviser (i) has $5 million or more of ''total assets,'' or (ii) controls, is controlled by, or is under common control with (a) another adviser that has $25 million or more of assets under management or (b) any person (other than a natural person) that

the sponsoring insurance company and contract owners. Each account typically is organized as a UIT, or in some cases as a management company having a sponsor-affiliated investment adviser. *See generally* Section 2(a)(37) of the Investment Company Act (15 U.S.C. 80a–2(a)(37)).

[39] Amended Rule 0–10(b) (17 CFR 270.0–10(b)).

[40] *See* amended Rule 0–7 (17 CFR 275.0–7); Proposing Release, *supra* note .

[41] Rule 0–7 (17 CFR 275.0–7).

[42] Amended Rule 0–7. ''Total assets'' is a broader and simpler term than ''business assets.'' *See* amended Rule 0–7(b)(2) (total assets means total assets as shown on the balance sheet of investment adviser or other ''person'' in a control relationship with the adviser). It includes business assets, such as leases and equipment, as well as other types of assets, such as cash and accounts receivable. Total assets should be easier for advisers to calculate than business assets, since the information on total assets is readily available on the balance sheets of advisers and their affiliates.

[43] *See* Proposing Release, *supra* note , at text accompanying n.60.

[44] *Id.* As noted above, the Commission received no comments.

[45] *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) at text accompanying note 5 (62 FR 28112 (May 22, 1997)) (''Adviser Registration Release'').

[46] *See* Section 203A(a)(1) of the Advisers Act (15 U.S.C. 80b–3a(a)(1)) (prohibiting an adviser from registering with the Commission if it is subject to regulation by its home state unless it has assets under management of $25 million or more). The Commission retains primary responsibility for larger advisers, advisers to investment companies, advisers whose principal office and place of business is located in one of the four states that do not regulate advisers or is located overseas, and advisers exempted by rule from the prohibition on registration with the Commission. *See* Section 203A(a)(1) and (c) of the Advisers Act (15 U.S.C. 80b–3a(a)(1) and (c)); Rule 203A–2 (17 CFR 275.203A–2) (exempting nationally recognized statistical rating organizations, certain pension consultants, any smaller adviser having the same principal office and place of business as a registered adviser affiliated with it through a control relationship, and any new firm reasonably expecting to have $25 million or more of assets under management).

[47] *See* Report on S. 1815, ''The Securities Investment Promotion Act of 1996,'' S. Rep. No. 293, 104th Cong., 2d Sess. 1–4 (1996) (legislation would focus SEC supervision ''on investment advisers most likely to be engaged in interstate commerce'' and focus state supervision ''on advisers whose activities are most likely to be centered in their home state''; ''legislation allows states to assume the primary role with respect to regulating advisers that are small, local businesses, managing less than $25 million in client assets, while the Commission's role is focused on larger advisers with $25 million or more in client assets under management'').

[48] The Advisers Act permits the Commission to increase (but not to reduce) the $25 million minimum threshold for registration with the Commission. *See* Section 203A(a)(1)(A) of the Advisers Act (15 U.S.C. 80b–3a(a)(1)(A)). To coordinate amended Rule 0–7 with future Commission rulemaking in this regard, the amended rule provides that the maximum threshold for a small business will increase in tandem with any increase in the minimum threshold for Advisers Act registration. Amended Rule 0–7(a)(1) and (3) (17 CFR 275.0–7(a)(1) and (3)). Rule 203A–1 (17 CFR 275.203A–1), which gives an adviser discretion whether to register with the Commission instead of a state if the adviser has between $25 million and $30 million of assets under management, does not affect the definition of small business for purposes of amended Rule 0–7. *See* Adviser Registration Release, *supra* note 45, at text accompanying nn.48–49 (Rule 203A–1 merely makes registration optional within a specified range without raising the minimum threshold for registration).

[49] *See* Proposing Release, *supra* note , at nn.51–58 and accompanying text (proposing to extend current Rule 0–7's $50,000 business asset test to all advisers; proposing not to treat adviser as small entity if affiliated with large adviser or fund or entity deemed large under Rule 0–10 under the Exchange Act (17 CFR 240.0–10)).

[50] *See* 1981 Proposing Release, *supra* note 15 at 19257, 19263 (two attributes desirable in size standards are capacity to differentiate the small members of an industry from other members and the use of readily available information to derive standards). Under the amended rule, the determination of the adviser's small status will be based on information reported by the adviser about its size and the size of its affiliates under two tests, as explained below. In contrast, the proposed amendments would have applied two size tests to the adviser and several other tests to affiliates. The Commission expects to propose to amend Form ADV to add questions needed to obtain the information.

has $5 million or more of total assets.[51] The Commission estimates that under amended Rule 0–7, approximately 1,500 registered advisers will be treated as small businesses, approximately 500 fewer than under the proposed amendments.[52] Most of this change is attributable to reducing the threshold for client assets to less than $25 million of assets under management. The advisers considered small businesses under the amended rule will consist primarily of the advisers that have less than $25 million of assets under management but are registered with the Commission because they have a principal office and place of business in one of the four states that does not regulate advisers.[53]

*C. Definitions Under the Exchange Act*

1. Exchanges

As discussed in the Proposing Release, the Commission is expanding the definition of ''small business'' as it applies to exchanges to include a requirement that an exchange also not be affiliated with any person (other than a natural person) that is not a small business as defined in Rule 0–10.[54] Under the amended rule, an exchange is ''affiliated'' with another entity when the exchange controls, is controlled by, or is under common control with the other entity. This change will conform the definition applicable to exchanges with other definitions of ''small business'' under the Exchange Act by applying the affiliation standard already applicable to broker-dealers, clearing agencies, bank municipal securities dealers, securities information processors, and transfer agents.[55]

2. Securities Information Processors

The Commission is retaining in substantially the same form the existing criteria for determining whether a securities information processor is a ''small business.'' This includes the requirement that, to be considered small, a securities information processor must have serviced less than 100 interrogation devices or moving tickers during the preceding fiscal year.[56] As proposed, the Commission also is modifying the definition of ''interrogation device'' for purposes of Rule 0–10 to take into account new technologies used to disseminate securities industry information to markets and market participants through increasingly diverse methods. Accordingly, for purposes of the amended small business definition, ''interrogation device'' includes any device that may be used to read or receive electronic information, including proprietary terminals or personal computers via computer-to-computer interfaces, or gateway access. This will include electronic devices that display securities information such as quotations and indications of interest, as well as those that display only last sale data or transaction reports.

3. Transfer Agents and Issuers

The amended small business definition for transfer agents retains the existing criteria based on volume of transfer business and number of shareholder accounts.[57] As discussed in the Proposing Release, however, the Commission is adding a third criterion: whether a transfer agent transfers only the items of ''small issuers,'' as defined under Exchange Act Rule 0–10.[58] The shares of small issuers, as opposed to those of large publicly-traded companies, typically are held by a small portion of the investing public and are less likely to be the subject of a substantial amount of trading activity. Thus, the activities of small transfer agents, many of which are not subject to registration under Section 17A of the Exchange Act, are not likely to have a substantial effect on the investing public or the operation of the national clearance and settlement system. In contrast, transfer agents for large companies whose shares are heavily traded are likely to have a far greater effect on securities processing, generally, and on the operation of the national clearance and settlement system.[59]

The Commission also is deleting language in Rule 0–10(a) that currently limits the definition of small business, as it refers to ''issuer'' or ''person,'' to Sections 12, 13, 14, 15(d), or 16 of the Exchange Act.[60] This deletion reflects that, under the amended rule, transfer agents who transfer items of issuers with total assets greater than $5 million will not be considered small for purposes of the Reg. Flex. Act. In addition, no transfer agent, broker-dealer, exchange, clearing agency, securities information processor, or bank municipal securities dealer will be classified as small if it is affiliated with an issuer that does not qualify as small under Rule 0–10. This change is consistent with the intent of the Reg. Flex. Act that only businesses and organizations that are ''independently owned'' may qualify as small entities.[61]

4. Broker-Dealers

As discussed in the Proposing Release, the Commission is retaining the capital standard currently set forth in Rule 0–10 that is used for determining whether a broker[62] or dealer[63] is deemed a ''small business.''[64] The

[51] *See* amended Rule 0–7(a) (2) and (3) (17 CFR 275.0–7(a)(2) and (3)). The $5 million total assets test is one measure of a small entity under Rule 0–10 (17 CFR 240.0–10(a)) under the Exchange Act. Amended Rule 0–7(b)(1) defines control consistent with Rule 203A–2(c) under the Advisers Act (17 CFR 275.203A–2(c)).

[52] The number of small businesses for which the Commission has primary regulatory responsibility has dropped sharply as a result of the Improvement Act's prohibiting most small advisers from registering with the Commission. *See supra* text accompanying notes 45–47. Following the final de-registration of those advisers no longer eligible to register with the Commission, there will be approximately 7,600 Commission-registered advisers. In contrast, prior to July 8, 1997 there were approximately 23,000 advisers registered with the Commission.

[53] *See supra* note 46. When one or more of these four states institutes a registration scheme for advisers with assets under management of less than $25 million, the number of small business advisers registered with the Commission will decrease. *See also* Adviser Registration Release, *supra* note 45, at n.42 (''Commission data suggests that most advisers that will remain registered with the Commission have assets under management well in excess of $25 million'').

[54] The term ''exchange'' is defined in Section 3(a)(1) of the Exchange Act (15 U.S.C. 78c(a)(1)). The Commission is retaining the existing provisions of Rule 0–10 that define as ''small'' those exchanges that are exempt from the requirements of rule 11Aa3–1 (17 CFR 240.11Aa3–1) regarding the dissemination of transaction reports and last sale data with respect to transactions in securities. Currently, none of the eight registered exchanges is fully exempted from the requirements of Rule 11Aa3–1 and, consequently, none is considered a ''small business'' under Rule 0–10.

[55] This amendment is consistent with the Commission's belief that it is appropriate to exclude entities with significant economic and financial resources from regulatory treatment as small businesses under the Reg. Flex. Act. *See* 1981 Proposing Release, 46 FR at 19257.

[56] The term ''securities information processor'' is defined in Section 3(a)(22) of the Exchange Act (15 U.S.C. 78c(a)(22)). Currently, neither of the two registered exclusive securities information processors is designated as a ''small business'' under Rule 0–10.

[57] The term ''transfer agent'' is defined in Section 3(a)(25) of the Exchange Act (15 U.S.C. 78c(a)(25)).

[58] Small issuers, for this purpose, are issuers with total assets of $5 million or less.

[59] See Securities and Exchange Commission, *Study of Unsafe and Unsound Practices of Broker and Dealers* 37–39 (1971).

[60] 15 U.S.C. 78*l*, 78m, 78n, 78o(d), and 78p.

[61] *See supra* note 16. As noted above, amended Rule 0–10 provides that only those transfer agents that limit the number of items they transfer, handle a limited number of shareholder accounts, and transfer small issuer securities are considered small businesses. Because this category is limited to those transfer agents that would generally be exempt from registration under Exchange Act Section 17A, the Commission believes that there will be few, if any, registered transfer agents that qualify as small businesses for purposes of the Reg. Flex. Act.

[62] The term ''broker'' is defined in Section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)).

[63] The term ''dealer'' is defined in Section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

[64] Rule 0–10 under the Exchange Act (17 CFR 240.0–10(c)) currently defines ''small business'' to include any broker or dealer that has total capital of less than $500,000 and that is not affiliated with

Commission, however, is expanding the affiliation standard applicable to broker-dealers. Under the amended definition, the Commission estimates that approximately 13 percent of all registered broker-dealers will be characterized as ''small.''

The affiliation test currently only looks to whether a broker-dealer controls, is controlled by, or is under common control with, an entity other than a small business or small organization. This test focuses primarily on relationships between broker-dealers based on voting control or the sharing of profits. As discussed in the Proposing Release, the structure and operation of broker-dealer activities suggest that other kinds of business relationships, such as the contractual relationship between an introducing broker and its clearing firm, can give rise to an opportunity by which a clearing firm can exercise substantial influence over the business of its introducing brokers. In order to conform better its affiliation standard to the nature of business relationships that exist between broker-dealers, the Commission is expanding the definition of affiliation applicable to broker-dealers under Rule 0–10 to include arrangements whereby one broker-dealer introduces transactions in securities to another.[65]

This new affiliation standard is consistent with SBA regulations addressing affiliation that consider whether individuals or firms have identical or substantially identical business interests, as in the case of firms that are economically dependent through contractual or other relationships.[66] As a practical matter, clearing and introducing firms have identical business interests. In fact, most introducing brokers could not be in business without the capital, technology, and back-office support provided by the clearing firm. Introducing and clearing brokers also have a shared legal responsibility for ensuring that a customer's account is handled properly.[67]

Under amended Rule 0–10, an introducing broker that introduces transactions to a large clearing firm generally will not be considered a ''small business'' for purposes of the Reg. Flex. Act. The Commission acknowledged in the Proposing Release, however, that certain broker-dealers that limit their activities to handling only investment company securities or interests or participations in insurance company separate accounts typically are small, sometimes one-person operations that combine limited securities activities with broader tax, financial planning, and insurance services. Accordingly, the Commission is providing an exception from the affiliation standard for these broker-dealers.

## III. Effects on Competition and Regulatory Flexibility Considerations

Section 23(a)(2) of the Exchange Act[68] requires the Commission, in adopting rules under the Exchange Act, to consider the impact a rule would have on competition and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission is of the view that the amendments to Exchange Act Rule 0–10 will not impose any burden on competition. The rule changes will not affect the manner in which any regulated entity conducts its business. Moreover, entities that will no longer be classified as small businesses for Reg. Flex. Act purposes should suffer no resulting competitive disadvantage. Although the Commission considers the impact of its rules and rule proposals on small entities, any modification or accommodation relating to size is based on objective criteria such as net assets and not whether an entity meets a ''small business'' definition under the Commission's Rules.

As discussed in the Proposing Release, the Commission has conferred with the SBA and the SBA concurs that no regulatory flexibility analysis is required for the amendments.[69] The definitions of the terms ''small business'' do not impose any requirements on small businesses. The definitions are interpretations of terms that identify those entities that the Commission will study for Reg. Flex. Act purposes when proposing and adopting rules, and are rules of agency practice and procedure.

## IV. Statutory Authority

The Commission is amending Rule 157 (17 CFR 230.157), Rule 0–10 (17 CFR 240.0–10), Rule 0–10 (17 CFR 270.0–10), and Rule 0–7 (17 CFR 275.0–7) pursuant to chapter 6 of title 5 of the United States Code (particularly Section 601 thereof (5 U.S.C. 601)), and pursuant to Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w), Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–37), and Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11).

## Text of Rule Amendments

### List of Subjects

*17 CFR Parts 230 and 270*

Investment companies, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 240*

Brokers, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 275*

Investment advisers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for Part 230 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w,

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any person (other than a natural person) that is not a small business under the rule.

[65] From a functional perspective, introducing and clearing brokers act as a unit in handling a customer's account. In most respects, introducing brokers are dependent on clearing firms to clear and to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing confirmations of customer trades and customer account statements. The clearing agreement outlining the respective duties and obligations of an introducing broker and its clearing firm typically contains various requirements imposed by the clearing firm with respect to the handling of customer accounts by the clearing and introducing brokers, and the clearing firm's maintenance of customer assets. Although the customer places its order directly with the introducing firm, the Commission considers the account to be an account of the clearing firm, which has primary legal responsibility with respect to the handling of customer funds and securities, and for sending account statements to the customer. Thus, both introducing and clearing firms have a shared responsibility for ensuring that a customer's account is handled properly.

[66] *See supra* notes 19–20 and accompanying text (SBA size standard considerations in determining ''small business concern''). See also Report to Accompany H.R. 4660, H.R. Rep. No. 96–519, pt.1, at 19 (1979) (suggesting that the definition of ''small businesses'' was intended to encompass businesses that are independently owned and operated and not dominant in their field of operation). Consistent with the Reg. Flex. Act definitions of small business, SBA regulations that address affiliation consider whether individuals or firms have identical or substantially identical business interests, as in the case of firms that are economically dependent through contractual or other relationships. 13 CFR 121.103(a).

[67] As a legal matter, for purposes of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) and the Commission's financial responsibility rules, a customer is the customer of the clearing firm. *See* Exchange Act Release No. 31511, 57 FR 56973 (Dec. 2, 1992).

[68] 15 U.S.C. 78w(a)(2).

[69] *See* Proposing Release, 62 FR at 4113.

78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

Section 230.157 is amended by revising the section heading and paragraph (b) to read as follows:

**§ 230.157 Small entities under the Securities Act for purposes of the Regulatory Flexibility Act.**

* * * * *

(b) When used with reference to an investment company that is an issuer for purposes of the Act, have the meaning ascribed to those terms by § 270.0–10 of this chapter.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.0–10 is amended to revise the section heading and paragraphs (a), (b), (e), (g)(2), (g)(3), and (i); redesignate paragraphs (h)(2) and (h)(3) as paragraphs (h)(3) and (h)(4), respectively; and add paragraphs (h)(2), (j) and (k) to read as follows:

**§ 240.0–10 Small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act.**

* * * * *

(a) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, mean an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less;

(b) When used with reference to an ''issuer'' or ''person'' that is an investment company, have the meaning ascribed to those terms by § 270.0–10 of this chapter;

* * * * *

(e) When used with reference to an exchange, mean any exchange that:

(1) Has been exempted from the reporting requirements of § 240.11Aa3–1; and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

* * * * *

(g) * * *

(2) Provided service to fewer than 100 interrogation devices or moving tickers at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section; and

(h) * * *

(2) Transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in this section; and

* * * * *

(i) For purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if:

(1) Such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or

(2) Such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.

(j) For purposes of paragraphs (d) through (h) of this section, a person is affiliated with another person if that person controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person.

(k) For purposes of paragraph (g) of this section, ''interrogation device'' shall refer to any device that may be used to read or receive securities information, including quotations, indications of interest, last sale data and transaction reports, and shall include proprietary terminals or personal computers that receive securities information via computer-to-computer interfaces or gateway access.

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 270 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

6. Section 270.0–10 is revised to read as follows:

**§ 270.0–10. Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.**

(a) *General.* For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking, the term *small business* or *small organization* for purposes of the Investment Company Act of 1940 shall mean an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. For purposes of this section:

(1) In the case of a management company, the term *group of related investment companies* shall mean two or more management companies (including series thereof) that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) Either:

(A) Have a common investment adviser or have investment advisers that are affiliated persons of each other; or

(B) Have a common administrator; and

(2) In the case of a unit investment trust, the term *group of related investment companies* shall mean two or more unit investment trusts (including series thereof) that have a common sponsor.

(b) *Special rule for insurance company separate accounts.* In determining whether an insurance company separate account is a *small business* or *small entity* pursuant to paragraph (a) of this section, the assets of the separate account shall be cumulated with the assets of the general account and all other separate accounts of the insurance company.

(c) *Determination of net assets.* The Commission may calculate its determination of the net assets of a group of related investment companies based on the net assets of each investment company in the group as of the end of such company's fiscal year.

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80b–2(a), 80b–3, 80b–4, 80b–6(4), 80b–6A, 80b–11, unless otherwise noted.

* * * * *

8. Section 275.0–7 is revised to read as follows:

**§ 275.0–7. Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.**

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(2) of the Act (15 U.S.C. 80b–3a(a)(2)) and reported on Form ADV–T (17 CFR 279.3) or its most recent Schedule I to Form ADV (17 CFR 279.1), having a total value of less than $25 million, or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b–3a(a)(1)(A));

(2) Did not have total assets of $5 million or more on the last day of the most recent fiscal year; and

(3) Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more (or such higher amount as the Commission may deem appropriate), or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.

(b) For purposes of this section:

(1) *Control* means the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another person is presumed to control the other person.

(2) *Total assets* means the total assets as shown on the balance sheet of the investment adviser or other person described above under paragraph (a)(3) of this section, or the balance sheet of the investment adviser or such other person with its subsidiaries consolidated, whichever is larger.

Dated: June 24, 1998.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–17387 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

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## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Parts 404 and 416

**RIN 0960–AE86**

## Administrative Review Process; Prehearing Proceedings and Decisions by Attorney Advisors; Extension of Expiration Date

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** These final rules extend the time period set out in our regulations during which attorney advisors in our Office of Hearings and Appeals (OHA) may conduct certain prehearing proceedings and, where the documentary record developed as a result of these proceedings warrants, issue decisions that are wholly favorable to the parties to the hearing in claims for Social Security or Supplemental Security Income (SSI) benefits based on disability. We are extending the date at which these rules will no longer be effective from July 1, 1998, until April 1, 1999.

**EFFECTIVE DATE:** These rules are effective June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Short, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

**SUPPLEMENTARY INFORMATION:** On June 30, 1995, in an action undertaken to reduce the record numbers of requests for an administrative law judge (ALJ) hearing pending in our OHA hearing offices, we published final rules in the **Federal Register** (60 FR 34126) that authorize OHA's attorney advisors to conduct certain prehearing proceedings and, if a decision that is wholly favorable to the parties to the hearing may be issued at the completion of these proceedings, to issue such a decision. These regulations, which are codified at §§ 404.942 and 416.1442, included a provision stating that the rules would no longer be effective on June 30, 1997, unless the Commissioner of Social Security extended the expiration date of the provisions by publication of a final rule in the **Federal Register**. We subsequently published a final rule in the **Federal Register** on June 30, 1997 (62 FR 35073), stating that these rules would no longer be effective on July 1, 1998.

In order to maximize our ability to meet our hearing production goals, we have decided to extend the date on which these rules will no longer be effective from July 1, 1998, to April 1, 1999. The final rules amend the sunset provision in §§ 404.942 and 416.1442 (which expressly provides for extending the expiration date of those sections) to provide that the provisions authorizing prehearing proceedings and decisions by attorney advisors will no longer be effective on April 1, 1999, unless the provisions are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

### Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because these rules only extend the date on which the regulatory provisions concerning prehearing proceedings and decisions by attorney advisors will no longer be effective. These rules make no substantive change to those provisions. The current regulations expressly provide that the provisions may be extended. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the provisions on prehearing proceedings and decisions by attorney advisors. However, without a timely extension of the expiration date for these provisions, we will lack

regulatory authority beginning July 1, 1998, to have OHA attorney advisors conduct certain prehearing proceedings and issue fully favorable decisions where appropriate under the rules. In order to provide for an uninterrupted continuance of that authority for the additional period we believe appropriate, and to ensure that we retain the ability to manage the hearings process appropriately, we find that it is in the public interest to make these rules effective upon publication.

### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the rules are not subject to OMB review.

### Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

### Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

### List of Subjects

*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: June 23, 1998.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

Subpart J is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 205(a), (b), (d)-(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405(a), (b), (d)-(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)-(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.942 is amended by revising paragraph (g), to read as follows:

**§ 404.942 Prehearing proceedings and decisions by attorney advisors.**

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 1999, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N is amended as follows:

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

**Authority:** Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. Section 416.1442 is amended by revising paragraph (g), to read as follows:

**§ 416.1442 Prehearing proceedings and decisions by attorney advisors.**

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 1999, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

[FR Doc. 98–17343 Filed 6–29–98; 8:45 am]

BILLING CODE 4190–29–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 868, 884, and 890

**[Docket No. 94N–0418]**

## Medical Devices; Retention of Three Preamendment Class III Devices in Class III

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is retaining the following three preamendments class III devices in class III: Lung water monitor, powered vaginal muscle stimulator for therapeutic use, and stair-climbing wheelchair. The agency is taking this action because insufficient information exists to determine that special controls would provide reasonable assurance of their safety and effectiveness, and/or these devices present a potential unreasonable risk of illness or injury.

**EFFECTIVE DATE:** July 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of June 18, 1997 (62 FR 33044), FDA issued a proposed rule to retain the lung water monitor, the powered vaginal muscle stimulator for therapeutic use, and the stair-climbing wheelchair in class III. This proposed retention in class III was based on a lack of information submitted in response to the section 515(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(i)) order to determine whether or not special controls could be established to reasonably assure the safety and effectiveness of these devices.

Interested persons were given until September 16, 1997, to comment on the proposed rule. During the comment period, FDA received no comments on the proposed rule.

### II. FDA's Conclusion

FDA has concluded that insufficient information exists to establish special controls to provide reasonable assurance of the safety and effectiveness of the lung water monitor, the powered vaginal muscle stimulator for therapeutic use, and the stair-climbing wheelchair and/or that these devices present a potential unreasonable risk of illness or injury.

### III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, and because this rule retains these devices as previously classified, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## V. Paperwork Reduction Act of 1995

This rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

This final rule is issued under sections 513, 515(i), and 701(a) of the act (21 U.S.C. 360c, 360e(i), and 371(a)) and under authority of the Commissioner of Food and Drugs.

Dated: June 17, 1998.

**D.B. Burlington,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 98–17290 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

**[TD 8772]**

**RIN 1545–AU08**

## Magnetic Media Filing Requirements for Information Returns

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code (Code). These regulations affect persons filing information returns. These regulations prescribe magnetic media filing requirements for employers filing wage and tax statements for employees in Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa. In addition, these regulations provide taxpayers with the guidance to comply with the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

**DATES:** *Effective date:* These regulations are effective June 30, 1998.

*Applicability date:* These regulations apply to information returns required to be filed on or after January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Donna Joy Welch, (202) 622–4910 (not a toll-free call), if the inquiry relates to provisions of these regulations. For further information, see the telephone numbers listed at the beginning of **SUPPLEMENTARY INFORMATION**

**SUPPLEMENTARY INFORMATION:** If the inquiry relates to magnetic media filing and magnetic media specifications for Form W–2, Form 499R–2/W–2PR, Form W–2VI, Form W–2GU, and Form W–2AS, persons residing in the following locations should contact the corresponding Social Security Administration office (not a toll-free call):

Alabama (404) 562–1314 (Atlanta),
Alaska (206) 615–2125 (Seattle),
American Samoa (415) 744–4559 (San Francisco),
Arizona (415) 744–4559 (San Francisco),
Arkansas (501) 324–5466 (Little Rock),
California (415) 744–4559 (San Francisco),
Colorado (303) 844–2364 (Denver),
Connecticut (617) 565–2895 (Boston),
Delaware (215) 597–4632 (Philadelphia),
District of Columbia (215) 597–4632 (Philadelphia),
Florida (404) 562–1314 (Atlanta),
Georgia (404) 562–1314 (Atlanta),
Guam (415) 744–4559 (San Francisco),
Hawaii (415) 744–4559 (San Francisco),
Idaho (206) 615–2125 (Seattle),
Illinois (312) 575–4244 (Chicago),
Indiana (312) 575–4244 (Chicago),
Iowa (816) 936–5649 (Kansas City),
Kansas (816) 936–5649 (Kansas City),
Kentucky (404) 562–1314 (Atlanta),
Louisiana (504) 389–0426 (Baton Rouge),
Maine (617) 565–2895 (Boston),
Maryland (215) 597–4632 (Philadelphia),
Massachusetts (617) 565–2895 (Boston),
Michigan (312) 575–4244 (Chicago),
Minnesota (312) 575–4244 (Chicago),
Mississippi (404) 562–1314 (Atlanta),
Missouri (816) 936–5649 (Kansas City),
Montana (303) 844–2364 (Denver),
Nebraska (816) 936–5649 (Kansas City),
Nevada (415) 744–4559 (San Francisco),
New Hampshire (617) 565–2895 (Boston),
New Jersey (212) 264–5643 (New York),
New Mexico (505) 262–6048 (Albuquerque),
New York (212) 264–5643 (New York),
North Carolina (404) 562–1314 (Atlanta),
North Dakota (303) 844–2364 (Denver),
Ohio (312) 575–4244 (Chicago),
Oklahoma (405) 951–3007 (Oklahoma City),
Oregon (206) 615–2125 (Seattle),
Pennsylvania (215) 597–4632 (Philadelphia),
Puerto Rico (787) 766–5574 (San Juan),
Rhode Island (617) 565–2895 (Boston),
South Carolina (404) 562–1314 (Atlanta),
South Dakota (303) 844–2364 (Denver),
Tennessee (404) 562–1314 (Atlanta),
Texas-Central/South (210) 229–6433 (San Antonio),
Texas-Dallas County (214) 767–6777 (Dallas),
Texas-North (817) 978–3123 (Forth Worth),
Texas-Southeast (713) 718–3015 (Houston),
Texas-West (505) 262–6048 (Albuquerque),
Utah (303) 844–2364 (Denver),
Vermont (617) 565–2895 (Boston),
Virgin Islands (787) 766–5574 (San Juan),
Virginia (215) 597–4632 (Philadelphia),
Washington (206) 615–2125 (Seattle),
West Virginia (215) 597–4632 (Philadelphia),
Wisconsin (312) 575–4244 (Chicago), and
Wyoming (303) 844–2364 (Denver).

If the inquiry relates to either the waiver procedure for all forms described

in these regulations or the magnetic media specifications for Forms 1042–S, 1098, 1099 series, 5498, 8027, or W–2G, persons should contact the Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg, West Virginia 25402–1359; telephone (304) 263–8700 (not a toll-free call).

**Background**

Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e) was added to the Internal Revenue Code (Code) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, 96 Stat. 610; and was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98–67, 97 Stat. 383; and section 7713 of the Revenue Reconciliation Act of 1989 (1989 Act), Pub. L. 101–239, 103 Stat. 2394. As amended by the 1989 Act, section 6011(e)(2)(A) provides that the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year.

On October 10, 1996, final and temporary regulations (TD 8683) amending the existing regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) were published in the **Federal Register** (61 FR 53056). A notice of proposed rulemaking (REG–209803–95) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (61 FR 53161). These regulations were issued at the request of the Social Security Administration (the SSA) that regulations be issued to require employers required to file 250 or more Forms 499R–2/W–2PR (Withholding Statement (Puerto Rico)), Forms W–2VI (U.S. Virgin Islands Wage and Tax Statement), Forms W–2GU (Guam Wage and Tax Statement), and Forms W–2AS (American Samoa Wage and Tax Statement) to file these forms with the SSA on magnetic media. Filing these forms on magnetic media will reduce administrative burdens and will increase accurate processing of information. These regulations also reflect the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

One written comment responding to this notice was received. No public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as modified and the corresponding temporary regulations are removed. The comment is discussed below.

**Summary of Comment**

The commentator suggests that the definition of *magnetic media* is too restrictive and that it does not encompass the use of additional technology that would facilitate the underlying reporting requirements. The commentator suggests that the definition is not broad enough to include the use of digital filing, specifically 2D barcode. Neither the IRS nor the SSA utilize digital filing technology at this time. However, the IRS and the SSA are committed to utilizing available technology that would facilitate the purpose of information reporting.

Therefore, the regulations make clear that the use of other media may be permitted in the future as provided in applicable regulations, revenue procedures, or publications.

*Relationship to Treasury Decision 8734*

Treasury Decision 8734 was published in the **Federal Register** on October 14, 1997 (62 FR 53387) and removed §§ 1.6045–1T and 1.6045–2T effective January 1, 1999. This document removes §§ 1.6045–1T and 1.6045–2T effective June 30, 1998. Because this document removes these sections at an earlier date, a document will be published later to amend TD 8734 to take this into account.

**Special Analyses**

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and prescribe only the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further, the economic impact caused by filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Donna Joy Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**§§ 1.6045–1T and 1.6045–2T [Removed]**

**Par. 2.** Sections 1.6045–1T and 1.6045–2T, currently in effect, are removed.

**Par. 3.** Section 1.6045–1, currently in effect, is amended by:

1. Revising paragraph (l).
2. Removing the language ''§ 1.6045–1T(l)'' and adding ''paragraph (l) of this section'' in its place in paragraph (q).

The revision reads as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

* * * * *

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

* * * * *

**Par. 4.** Section 1.6045–2, currently in effect, is amended by:

1. Revising paragraph (g)(2).
2. Removing the language ''§ 1.6045–2T(g)(2)'' and adding ''paragraph (g)(2) of this section'' in its place in paragraph (i).

The revision reads as follows:

**§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.**

* * * * *

(g) * * *

(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

* * * * *

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 5.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 6.** Section 301.6011–2 is amended by:

1. Revising paragraphs (a)(1), (b)(1), (b)(2), (c)(1) heading, (c)(1)(i), (c)(1)(iii), (c)(2), (d), (f), (g) heading, and (g)(2).
2. Adding paragraph (c)(1)(iv).
3. Removing paragraphs (c)(3) and (c)(4) and the last sentence of paragraph (e).

The revisions and addition read as follows:

**§ 301.6011–2 Required use of magnetic media.**

(a) * * *

(1) *Magnetic media.* The term *magnetic media* means any media permitted under applicable regulations, revenue procedures or publications, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

* * * * *

(b) *Returns required on magnetic media.* (1) If the use of Form 1042–S, 1098, 1099 series, 5498, 8027, W–2G , or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns on magnetic media must be made in accordance with applicable revenue procedures or publications (see § 601.601(d)(2)(ii)(*b*) of this chapter). Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the Internal Revenue Service) to a magnetic medium must be obtained by submitting Form 4419 (Application for Filing Information Returns Magnetically/Electronically) prior to submitting a return described in this paragraph (b)(1) on the magnetic medium.

(2) If the use of Form W–2 (Wage and Tax Statement), Form 499R–2/W–2PR (Withholding Statement (Puerto Rico)), Form W–2VI (U.S. Virgin Islands Wage and Tax Statement), Form W–2GU (Guam Wage and Tax Statement), Form W–2AS (American Samoa Wage and Tax Statement), or other form treated as a form specified in this paragraph (b)(2) is required for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

* * * * *

(c) *Exceptions*—(1) *Low-volume filers/250-threshold*—(i) *In general.* No person is required to file information returns on magnetic media unless the person is required to file 250 or more returns during the calendar year. Persons filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form, or, alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

* * * * *

(iii) *No aggregation.* Each type of information return described in paragraphs (b)(1) and (2) of this section is considered a separate return for purposes of this paragraph (c)(1). Therefore, the 250-threshold applies separately to each type of form required to be filed.

(iv) *Examples.* The provisions of paragraph (c)(1)(iii) of this section are illustrated by the following examples:

*Example 1.* For the calendar year ending December 31, 1998, Company X is required to file 200 returns on Form 1099–INT and 350 returns on Form 1099–MISC. Company X is not required to file Forms 1099–INT on magnetic media but is required to file Forms 1099–MISC on magnetic media.

*Example 2.* During the calendar year ending December 31, 1998, Company Y has 275 employees in Puerto Rico and 50 employees in American Samoa. Company Y is required to file Forms 499R–2/W–2PR on magnetic media but is not required to file Forms W–2AS on magnetic media.

*Example 3.* For the calendar year ending December 31, 1998, Company Z files 300 original returns on Form 1099–DIV and later files 70 corrected returns on Form 1099–DIV. Company Z is required to file the original returns on magnetic media. However, Company Z is not required to file the corrected returns on magnetic media because the corrected returns fall under the 250-threshold. See § 301.6721–1(a)(2)(ii).

(2) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (c)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the foregoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W–2, Forms 499R–2/W–2PR, Forms W–2VI, Forms W–2GU, or Form W–2AS is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship (see § 31.6071(a)–1(a)(3)(ii) of this chapter). A request for waiver must be

made in accordance with applicable revenue procedures or publications (see § 601.601(d)(2)(ii)(*b*) of this chapter). Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) The Commissioner may prescribe rules that supplement the provisions of paragraph (c)(2)(i) of this section.

(d) *Paper form returns.* Returns submitted on paper forms (whether or not machine-readable) permitted under paragraph (c) of this section shall be in accordance with applicable Internal Revenue Service or Social Security Administration procedures.

* * * * *

(f) *Failure to file.* If a person fails to file an information return on magnetic media when required to do so by this section, the person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section fails to file a return on machine-readable paper form when required to do so by this section, the person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns. See also section 6724 and the regulations under section 6721 for the specific rules and limitations regarding the penalty imposed under section 6721 for failure to file on magnetic media.

(g) *Effective dates.* * * *

(2) Paragraphs (a)(1), (b)(1), (b)(2), (c)(1)(i), (c)(1)(iii), (c)(1)(iv), (c)(2), (d), (e), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e).

**§ 301.6011–2T [Removed].**

**Par. 7.** Section 301.6011–2T is removed.

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

Approved: May 22, 1998.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 98–16411 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 178

**(T.D. ATF–401; Ref: Notice No. 862)**

**RIN: 1512–AB64**

## Implementation of Public Law 104208, Omnibus Consolidated Appropriations Act of 1997 (96R–034P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Temporary Rule (Treasury decision).

**SUMMARY:** This temporary rule implements the provisions of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, which amended the Gun Control Act of 1968. Specifically, the new law makes it unlawful for individuals who have been convicted of a ''misdemeanor crime of domestic violence'' to ship, transport, receive or possess firearms and ammunition, and prohibits sales or other dispositions of firearms and ammunition to such individuals. Further, the law requires individuals acquiring handguns from Federal firearms licensees under the Brady law to certify that they have not been convicted of such a crime. Additionally, it allows all Federal firearms licensees to engage in the business of dealing in curio or relic firearms with another licensee away from their licensed premises. This temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

**EFFECTIVE DATE:** The temporary regulations are effective June 30, 1998.

**ADDRESS:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

**FOR FURTHER INFORMATION CONTACT:** Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202–927–8210).

**SUPPLEMENTARY INFORMATION:**

### Background

On September 30, 1996, The Omnibus Consolidated Appropriations Act of 1997 (hereinafter, ''the Act''), Pub. L. 104–208 (110 Stat. 3009), was enacted. The Act amended the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. The amendments became effective upon the date of enactment. The new statutory provisions and the regulation changes necessitated by the Act are as follows:

(1) *Misdemeanor crime of domestic violence.* The Act amended 18 U.S.C. 922(g) to make it unlawful for any person convicted of a ''misdemeanor crime of domestic violence'' to ship, transport, possess, or receive in or affecting commerce firearms or ammunition. It also amended 18 U.S.C. 922(d) to make it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

As defined in the GCA, a ''misdemeanor crime of domestic violence'' means an offense that: (1) Is a misdemeanor under Federal or State law; (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and (3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes any offense that is classified as a misdemeanor under Federal or State law. (An example of a Federal misdemeanor is a conviction in an Indian Court established pursuant to 25 CFR part 11. Misdemeanor convictions in other Indian courts are not Federal misdemeanors because these courts are not considered Federal or State courts.) In addition, in States that do not classify offenses as misdemeanors, the definition includes any State or local offense punishable by imprisonment for a term of one year or less.

Accordingly, if State A has an offense classified as a State ''domestic violence misdemeanor'' that is punishable by up to five years imprisonment, it would be a misdemeanor crime of domestic violence as defined in the GCA.

If State B does not characterize offenses as misdemeanors, but has a domestic violence offense that is punishable by no more than one year imprisonment, this offense would be a misdemeanor crime of domestic violence as defined in the GCA. Therefore, a person convicted of such an offense would be subject to firearms disabilities under 18 U.S.C. 922(g)(9).

Moreover, the definition includes offenses that are punishable only by a fine, as well as offenses that are punishable by a term of imprisonment. Nothing in the language of the statute limits the term misdemeanor crime of domestic violence to offenses punishable by imprisonment. The legislative history of the statute illustrates that the prohibition on firearm possession by persons convicted of such offenses was to be as broad as possible, for example, covering individuals who plead guilty to minor offenses.

The prohibition also applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer lawfully possess a firearm or ammunition.

Whether a person has been ''convicted'' of a misdemeanor crime of domestic violence is determined by the law of the jurisdiction where the proceedings were held. In addition, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights upon conviction for such an offense) *AND* the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

In addition, a person shall not be considered to have been convicted of such an offense, unless (1) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel; and (2) if the person was entitled to a jury trial, the case was tried by a jury or the person knowingly and intelligently waived the right to a jury trial by guilty plea or otherwise.

The definition of misdemeanor crime of domestic violence includes all offenses that have as an element the use or attempted use of physical force (*e.g.*, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault and battery against his or her spouse would be prohibited from receiving or possessing firearms or ammunition.

A misdemeanor crime of domestic violence includes an offense that is committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

The statute does not define the phrase ''a person who is cohabiting with the victim as a spouse'' or a ''person similarly situated to a spouse.'' ''Cohabit'' is commonly defined as ''to live together as husband and wife, especially when not legally married.'' Webster's New World Dictionary of the American Language, 2nd College Edition, 1974. Therefore, for purposes of these regulations the phrase ''cohabiting as a spouse'' means two persons living together in an intimate relationship who hold themselves out as husband and wife.

Further, the regulations interpret the phrase ''similarly situated to a spouse'' to mean two persons who share the same domicile in an intimate relationship. A ''domicile'' is defined as ''one's fixed place of dwelling, where one intends to reside more or less permanently.'' Webster's New World Dictionary of the American Language, 2nd College Edition, 1974. Unlike persons ''cohabiting with a spouse,'' persons ''similarly situated'' do not necessarily have to hold themselves out as husband and wife.

The regulation also implements the Act's amendments to 18 U.S.C. 922(s) to require individuals who intend to acquire handguns from licensees to state on the Brady Form, ATF Form 5300.35, whether they have been convicted of a ''misdemeanor crime of domestic violence.''

Prior to the Act, employees of government agencies with firearms disabilities were allowed to receive and possess firearms for official duties under the exemption in 18 U.S.C. 925(a)(1). However, the Act amended section 925(a)(1) to prohibit the possession of firearms and ammunition by any individual convicted of a misdemeanor crime of domestic violence. Accordingly, the regulations provide that employees of government agencies convicted of disqualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a disqualifying misdemeanor may not lawfully possess or receive firearms or ammunition for any purpose, including performance of their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by government employees for use in performing their official duties, and government employees' personal firearms and ammunition.

The regulations are also being amended to provide that dealers may continue to sell firearms to law enforcement officers, including out-of-State officers, for official use without requiring them to fill out a Form 4473 or a Form 5300.35. Prior to the Act, law enforcement officers could establish their exemption from these requirements if they presented a certification letter on their agency's letterhead, signed by a person in authority within the agency, and stating that the firearm would be used in the performance of official duties. This procedure is now being incorporated into the regulations.

To ensure that law enforcement officers who purchase firearms for official use are not subject to the misdemeanor crime of domestic violence disability, the regulations provide that the certification letter must also state that a records check does not disclose any convictions of the officer for a misdemeanor crime of domestic violence. This new requirement allows for an effective method of determining whether the officer is prohibited from purchasing firearms and provides safeguards equivalent to those afforded by the Form 4473 and Form 5300.35. Disposition of the firearm to the officer must still be entered into the licensee's permanent records and the certification letter must be retained in the licensee's files.

(2) *Disposition of Curio or Relic Firearms by Licensed Importers, Manufacturers, and Dealers Away From Their Licensed Premises.* The Act amended 18 U.S.C. 923(j) to allow licensed importers, manufacturers, and dealers to engage in the business of selling or transferring curio or relic firearms to other licensees away from their licensed premises. Prior to the amendment, licensed importers, manufacturers, and dealers were restricted to conducting business from their licensed premises and temporarily at gun shows away from the licensed premises if the gun show was in the same State as that specified on the license. The regulation at § 178.50 is being amended to reflect this amendment. In addition, § 178.100 is being amended to require licensees to record in their acquisition and disposition records the location of the sale or disposition.

Licensed importers, manufacturers, and dealers are still subject to all recordkeeping requirements in the

regulations concerning the sale or other disposition of curios or relics.

**Executive Order 12866**

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866, because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

**Administrative Procedure Act**

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. § 553(b), or subject to the effective date limitation in section 553(d).

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. § 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

**Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0520. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is in §§ 178.130(a)(1) and 178.134. This information is required to prevent the purchase of handguns by persons convicted of a misdemeanor crime of domestic violence. The likely respondents are individuals.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information: The author of this document is Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 178**

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

**Authority and Issuance**

27 CFR part 178 is amended as follows:

## PART 178—COMMERCE IN FIREARMS AND AMMUNITION

**Paragraph 1.** The authority citation for 27 CFR part 178 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

**Par. 2.** Section 178.1(a) is revised to read as follows:

### § 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), Pub. L. 103–159 (107 Stat. 1536), Pub. L. 103–322 (108 Stat. 1796), and Pub. L. 104–208 (110 Stat. 3009).

* * * * *

**Par. 3.** Section 178.11 is amended by adding the definition for ''misdemeanor crime of domestic violence'' to read as follows:

### § 178.11 Meaning of terms.

* * * * *

*Misdemeanor crime of domestic violence.* (a) Is a Federal, State or local offense that:

(1) Is a misdemeanor under Federal or State law or, in States which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the State statute specifically defines the offense as a ''misdemeanor'' or as a ''misdemeanor crime of domestic violence.'' The term includes all such misdemeanor convictions in Indian Courts established pursuant to 25 CFR part 11.);

(2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and

(3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a ''common law'' marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

(b) A person shall not be considered to have been convicted of such an offense for purposes of this part unless:

(1) The person is considered to have been convicted by the jurisdiction in which the proceedings were held.

(2) The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(3) In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(i) The case was tried by a jury, or

(ii) The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(c) A person shall not be considered to have been convicted of such an offense for purposes of this part if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

* * * * *

**Par. 4.** Section 178.32 is amended by removing the word ''or'' at the end of paragraph (a)(7), by removing the period at the end of paragraph (a)(8)(iii)(B) and adding in its place '', or'', by removing the word ''or'' at the end of paragraph (d)(7), by removing the period at the end

of paragraph (d)(8)(ii)(B) and adding in its place ‘‘, or’’, and by adding new paragraphs (a)(9) and (d)(9) to read as follows:

**§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.**

(a) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

* * * * *

(d) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

**Par. 5.** Section 178.50 is amended by removing the word ‘‘or’’ at the end of paragraph (b), by removing the period at the end of paragraph (c) and adding in its place ‘‘; or’’, and by adding new paragraph (d) to read as follows:

**§ 178.50 Locations covered by license.**

* * * * *

(d) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location pursuant to the provisions of § 178.100.

**Par. 6.** Section 178.99 is amended by removing the word ‘‘or’’ at the end of paragraph (c)(7), by removing the period at the end of paragraph (c)(8)(ii)(B) and adding in its place ‘‘, or’’, and by adding new paragraph (c)(9) to read as follows:

**§ 178.99 Certain prohibited sales or deliveries.**

* * * * *

(c) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

* * * * *

**Par. 7.** Section 178.100 is amended by redesignating paragraph (a) as (a)(1), by adding new paragraph (a)(2), and by revising paragraph (c) to read as follows:

**§ 178.100 Conduct of business away from licensed premises.**

(a)(1) * * *

(2) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location.

* * * * *

(c) Licensees conducting business at locations other than the premises specified on their license under the provisions of paragraph (a) of this section shall maintain firearms records in the form and manner prescribed by Subpart H of this part. In addition, records of firearms transactions conducted at such locations shall include the location of the sale or other disposition, be entered in the acquisition and disposition records of the licensee, and retained on the premises specified on the license.

**Par. 8.** Section 178.130(a)(1) is amended by revising the last sentence to read as follows:

**§ 178.130 Statement of intent to obtain a handgun after February 27, 1994, and before November 30, 1998.**

(a)(1) * * * The transferee must date and execute the sworn statement contained on the form showing that the transferee is not under indictment for a crime punishable by imprisonment for a term exceeding 1 year; has not been convicted in any court of such a crime; is not a fugitive from justice; is not an unlawful user of or addicted to any controlled substance; has not been adjudicated as a mental defective or been committed to a mental institution; is not an alien who is illegally or unlawfully in the United States; has not been discharged from the Armed Forces under dishonorable conditions; is not a person who, having been a citizen of the United States, has renounced such citizenship; and has not been convicted of a misdemeanor crime of domestic violence.

* * * * *

**Par. 9.** Section 178.134 is added to Subpart H to read as follows:

**§ 178.134 Sale of firearms to law enforcement officers.**

(a) Law enforcement officers purchasing firearms for official use who provide the licensee with a certification on agency letterhead, signed by a person in authority within the agency (other than the officer purchasing the firearm), stating that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence are not required to complete Form 4473 or Form 5300.35. The law enforcement officer purchasing the firearm may purchase a firearm from a licensee in another State, regardless of where the officer resides or where the agency is located.

(b)(1) The following individuals are considered to have sufficient authority to certify that law enforcement officers purchasing firearms will use the firearms in the performance of official duties:

(i) In a city or county police department, the director of public safety or the chief or commissioner of police.

(ii) In a sheriff’s office, the sheriff.

(iii) In a State police or highway patrol department, the superintendent or the supervisor in charge of the office to which the State officer or employee is assigned.

(iv) In Federal law enforcement offices, the supervisor in charge of the office to which the Federal officer or employee is assigned.

(2) An individual signing on behalf of the person in authority is acceptable, provided there is a proper delegation of authority.

(c) Licensees are not required to prepare a Form 4473 or Form 5300.35 covering sales of firearm made in accordance with paragraph (a) of this section to law enforcement officers for official use. However, disposition to the officer must be entered into the licensee’s permanent records, and the certification letter must be retained in the licensee’s files.

**Par. 10.** Section 178.141 is amended by revising the introductory text to read as follows:

**§ 178.141 General.**

With the exception of §§ 178.32(a)(9) and (d)(9) and 178.99(c)(9), the provisions of this part shall not apply with respect to:

* * * * *

**Par. 11.** Section 178.144 is amended by removing the word ‘‘and’’ at the end of paragraph (c)(6), by removing the period at the end of paragraph (c)(7) and by adding in its place ‘‘; and’’, and by adding paragraph (c)(8) to read as follows:

**§ 178.144 Relief from disabilities under the Act.**

* * * * *

(c) * * *

(8) In the case of an applicant who has been convicted of a misdemeanor crime of domestic violence, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory or that civil rights were restored.

* * * * *

Signed: February 18, 1998.

**John W. Magaw,**

*Director.*

Approved: April 24, 1998.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 98–17288 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–31–U

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 1, 64, 66, 67, 100, 109, 110, 115, 117, 118, 130, 135, 141, 143, 144, 146, 151, 153, 154, 155, 157, 160, 161, 162, 163, 164, 165, 174, 175, 181, and 183**

**[USCG–1998–3799]**

## Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule makes editorial and technical changes throughout Title 33 of the Code of Federal Regulations (CFR) to update the title before it is recodified on July 1. It corrects addresses, updates cross-references, makes conforming amendments, and makes other technical corrections. This rule will have no substantive effect on the regulated public.

**DATES:** This rule is effective on June 30, 1998.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

**FOR FURTHER INFORMATION CONTACT:** Janet Walton, Project Manager, Standards Evaluation and Development Division (G–MSR–2), 202–267–0257.

**SUPPLEMENTARY INFORMATION:**

### Discussion of the Rule

This rule makes editorial changes throughout the title, corrects addresses, updates cross-references, makes conforming amendments to geographical descriptions resulting from organizational changes, and makes other technical and editorial corrections. Some editorial changes are discussed individually in the following paragraphs. This rule does not change any substantive requirements of existing regulations.

### Section 100.50

This rule removes § 100.50, Penalties. On April 8, 1997, the Coast Guard published a final rule, entitled Civil Money Penalties Inflation Adjustments [CGD 96–052] (62 FR 16695), which incorporated this section into Table 1.—Civil Monetary Penalty Inflation Adjustments, in 33 CFR part 27.

### Part 130

On March 7, 1996, the Coast Guard published a final rule finalizing its interim regulations implementing the provisions concerning financial responsibility for vessels under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (Acts) [CGD 91–005] (61 FR 9264). In addition, the Coast Guard removed obsolete provisions by removing 33 CFR parts 131, 132 and 137.

As stated in the final rule, ''Part 130, the remaining preexisting vessel financial responsibility part, is being phased out and will be removed after December 27, 1997, at the close of the transition schedule established by § 138.15(b) of the interim rule and, now, this final rule.'' With this final rule, the Coast Guard removes part 130.

### Section 174.121

This rule revises § 174.121 to reflect the current address for States forwarding copies of casualty or accident reports to the Commandant (G–OCC).

### Section 175.17

In § 175.17, the exemption in paragraph (e) for recreational submersibles terminated on April 30, 1995. This rule removes the paragraph.

### Section 175.135

In § 175.135, the provisions of paragraph (a) expired in July 1982. This rule removes the paragraph.

### Section 181.21

The Coast Guard revises § 181.21 to reflect the current statutory citation in 46 U.S.C. 4301.

### Section 183.901

This rule removes § 183.901 because the Outboard Marine Corporation no longer builds the ''OMC Sea Drive'' and the special provision is not relevant to another product.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule involves internal agency practices and procedures, and it will not impose any costs on the public.

### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34) (a) and (b) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraphs (34) (a) and (b), concerning regulations that are editorial or procedural and concerning internal agency functions or organization. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects

*33 CFR Part 1*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

*33 CFR Part 64*

Navigation (water), Reporting and recordkeeping requirements.

*33 CFR Part 66*

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

*33 CFR Part 67*

Continental shelf, Navigation (water), Reporting and recordkeeping requirements.

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*33 CFR Part 109*

Anchorage grounds.

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 115*

Administrative practice and procedure, Bridges, Reporting and recordkeeping requirements.

*33 CFR Part 117*

Bridges.

*33 CFR Part 118*

Bridges.

*33 CFR Part 130*

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 135*

Administrative practice and procedure, Advertising, Claims, Continental shelf, Insurance, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 141*

Citizenship and naturalization, Continental shelf, Employment, Reporting and recordkeeping requirements.

*33 CFR Part 143*

Continental shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

*33 CFR Part 144*

Continental shelf, Marine safety, Occupational safety and health.

*33 CFR Part 146*

Continental shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 151*

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 153*

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 154*

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 155*

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 157*

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 160*

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

*33 CFR Part 161*

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

*33 CFR Part 162*

Navigation (water), Waterways.

*33 CFR Part 163*

Cargo vessels, Harbors, Navigation (water), Waterways.

*33 CFR Part 164*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

*33 CFR Part 174*

Intergovernmental relations, Marine safety, Reporting and recordkeeping requirements.

*33 CFR Part 175*

Marine safety.

*33 CFR Part 181*

Labeling, Marine safety, Reporting and recordkeeping requirements.

*33 CFR Part 183*

Marine safety, Reporting and recordkeeping requirements, Administrative practice and procedure.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 64, 66, 67, 100, 109, 110, 115, 117, 118, 130, 135, 141, 143, 144, 146, 151, 153, 154, 155, 157, 160, 161, 162, 163, 164, 165, 174, 175, 181, and 183 as follows:

## PART 1—GENERAL PROVISIONS

### Subpart 1.01—Delegation of Authority

1. Revise the authority citation for subpart 1.01 to read as follows:

**Authority:** 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

**§ 1.01–20 [Amended]**

2. In § 1.01–20, remove paragraph (b) and remove the designator for paragraph (a).

3. Revise § 1.01–50 to read as follows:

**§ 1.01–50 Delegation to District Commander, Seventeenth Coast Guard District.**

The Commandant redelegates to the District Commander, Seventeenth Coast Guard District, the authority in 46 U.S.C. 3302(i)(1) to issue permits to certain vessels transporting cargo, including bulk fuel, from one place in Alaska to another place in Alaska.

### Subpart 1.20—Testimony by Coast Guard Personnel and Production of Records in Legal Proceedings

4. The authority citation for subpart 1.20 continues to read as follows:

**Authority:** 5 U.S.C. 301; 14 U.S.C. 632, 633, 49 U.S.C. 322; 49 CFR 1.46 and part 9.

**§ 1.20–1 [Amended]**

5. In § 1.20–1(c), remove the words ''Claims and Litigation Division'' and add, in their place, the words ''Office of Claims and Litigation'', wherever they appear.

### Subpart 1.26—Charges for Duplicate Medals, and Sales of Personal Property, Equipment for Services and Rentals

6. The authority citation for subpart 1.26 continues to read as follows:

**Authority:** 14 U.S.C. 633; 49 CFR 1.46(k).

**§ 1.26–15 [Amended]**

7. In § 1.26–15(a), remove the last sentence, in the paragraph, and add, in its place, the words ''49 U.S.C. 44502(d) authorizes the Coast Guard to provide for assistance, the sale of fuel, oil, equipment, and supplies, to an aircraft when necessary to allow the aircraft to continue to the nearest private airport.''.

## PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

8. The authority citation for part 64 continues to read as follows:

**Authority:** 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; 49 CFR 1.46.

### § 64.11 [Amended]

9. In § 64.11(b) introductory text, remove the words ''report required by 46 CFR 4.05–1, Notice of Marine Casualty'' and add, in their place, the words ''information required by 46 CFR 4.05, Notice of Marine Casualty and Voyage Records''.

## PART 66—PRIVATE AIDS TO NAVIGATION

10. The authority citation for part 66 continues to read as follows:

**Authority:** 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

### § 66.01–3 [Amended]

11. In § 66.01–3(a), remove the words ''49 CFR 1.4(g)'' and add, in their place, the words ''49 CFR 1.45(b)''.

## PART 67—AIDS TO NAVIGATION ON ARTIFICIAL ISLANDS AND FIXED STRUCTURES

12. The authority citation for part 67 continues to read as follows:

**Authority:** 14 U.S.C. 85, 633; 43 U.S.C. 1333; 49 CFR 1.46.

### § 67.01–10 [Amended]

13. In § 67.01–10, remove paragraph (a) and remove the designator for paragraph (b).

## PART 100—MARINE EVENTS

14. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

### § 100.50 [Removed]

15. Remove § 100.50 and the effective date note immediately following the section.

### § 100.1102 [Amended]

16. In § 100.1102(b), remove the words ''Commander (oan), Eleventh Coast Guard District, 400 Oceangate Blvd., Long Beach, CA 90822–5399.'' and add, in their place, the words ''Commander (pow), Eleventh Coast Guard District, Coast Guard Island, Building 50–6, Alameda, CA 94501–5100.''

## PART 109—GENERAL

17. The authority citation for part 109 continues to read as follows:

**Authority:** R.S. 4233, as amended, 28 Stat. 647 as amended, 30 Stat. 98, as amended, sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1), 80 Stat. 940; 33 U.S.C. 180, 258, 322, 471, 49 U.S.C. 1655(g)(1); Department of Transportation Order 1100.1, March 31, 1967, 49 CFR 1.4(a)(3).

### § 109.01 [Amended]

18. In § 109.01, remove paragraph (b) and remove the designator for paragraph (a).

### § 109.05 [Amended]

19. In § 109.05(a), remove the words ''redelegated, with specific limitations, by the Commandant to each Coast Guard District Commander in § 1.05–1(g)'', and add, in their place, the words ''redelegated the authority to establish anchorage grounds to each Coast Guard District Commander in § 1.05–1(e)(1)(i)''.

### § 109.10 [Amended]

20. In § 109.10, remove the words ''in Title 49, Code of Federal Regulations and redelegated, with specified limitations, by the Commandant to each Coast Guard District Commander in § 1.05–1(g) of this title'' and add, in their place, the words ''under § 1.46 of Title 49 CFR, who has redelegated pursuant to the authority to establish special anchorage areas to each Coast Guard District Commander in § 1.05–1(e)(1)(i)''.

## PART 110—ANCHORAGE REGULATIONS

21. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

22. Revise § 110.1(a) to read as follows:

### § 110.1 General.

(a) The areas described in subpart A of this part are designated as special anchorage areas for purposes of 33 U.S.C. §§ 2030(g) and 2035(j). Vessels of less than 20 meters in length, and barges, canal boats, scows, or other nondescript craft, are not required to sound signals required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035). Vessels of less than 20 meters are not required to exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C. 2030).

* * * * *

### § 110.155 [Amended]

23. In § 110.155, in the NOTE immediately following paragraph (f)(1) introductory text, remove the numbers ''(4) and (5)'' and add, in their place, the numbers ''(2) and (3)''; remove the NOTE immediately following paragraph (j)(5)(i); in paragraph (l)(8) introductory text, remove the words ''Captain of the Port, Mooring Permit Section, Building 109, Governors Island, New York, N.Y. 10004'' and add, in their place, the words ''Coast Guard Activities New York, Waterways Oversight Branch, 212 Coast Guard Drive, Staten Island, NY 10305''; and in paragraph (n)(1), remove the numbers ''49–C, 49–F,'' and add, in their place, the number ''49–F''.

24. Revise § 110.158(a)(8) to read as follows:

### § 110.158 Baltimore Harbor, MD.

(a) * * *

(8) *Dead ship anchorage.* The waters bounded by a line connecting the following points:

| *Latitude* | *Longitude* |
|---|---|
| 39°13′00.0″N | 76°34′11.5″W |
| 39°13′13.0″N | 76°34′11.9″W |
| 39°13′13.5″N | 76°34′06.8″W |
| 39°13′14.4″N | 76°33′30.9″W |
| 39°13′00.0″N | 76°33′31.0″W |

and thence to the point of beginning.

Datum: NAD 27

The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. A written permit from the Captain of the Port must be obtained prior to use of this anchorage for more than 72 hours.

* * * * *

### § 110.206 [Amended]

25. In § 110.206(a), remove the word ''the'' immediately preceding the word ''U.S.''; remove the word ''lyng'' and add, in its place, the word ''line''; and remove the number ''42°20′06″ N. 82° 59′57″W.'' and add, in its place, the number ''42°20′06″N., 82°59′57″W.''.

## PART 115—BRIDGE LOCATIONS AND CLEARANCES; ADMINISTRATIVE PROCEDURES

26. The authority citation for part 115 continues to read as follows:

**Authority:** c. 425, sec. 9, 30 Stat. 1151 (33 U.S.C. 401); c. 1130, sec. 1, 34 Stat. 84 (33 U.S.C. 491); sec. 5, 28 Stat. 362, as amended (33 U.S.C. 499); sec. 11, 54 Stat. 501, as amended (33 U.S.C. 521); c. 753, Title V, sec. 502, 60 Stat. 847, as amended (33 U.S.C. 525); 86 Stat. 732 (33 U.S.C. 535); 14 U.S.C. 633; sec. (g)(6), 80 Stat. 941 (49 U.S.C. 1655(g)); 49 CFR 1.46(c).

**§ 115.70 [Amended]**

27. In § 115.70, remove the last sentence in paragraph (b).

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

28. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

**§ 117.123 [Amended]**

29. In § 117.123(c), remove the words ''Burlington Northern'' and add, in their place, the words ''Arkansas Missouri''; remove the words ''Missouri Pacific Railroad Bridge'' and add, in their place, the words ''Missouri Pacific Railroad Drawbridge''; remove the words ''White River'' and add, in their place, the words ''Arkansas Waterway''; and revise the section heading to read as follows:

**§ 117.123 Arkansas Waterway-Automated Railroad Bridges.**

* * * * *

**§ 117.133 [Amended]**

30. In § 117.133, remove paragraph (a) and remove the designator for paragraph (b).

**§ 117.153 [Amended]**

31. In § 117.153, remove the words ''Northwestern Pacific railroad'' and add, in their place, the words ''Golden Gate Bridge, Highway and Transportation District''.

**§ 117.155 [Amended]**

32. In § 117.155, remove the words ''North Coast Railroad Bridge'' and add, in their place, the words ''Northwestern Pacific Railroad Company bridge''.

**§ 117.179 [Amended]**

33. In § 117.179, remove the words ''Southern Pacific'' and add, in their place, the words ''San Mateo County Transportation Department''; and remove the words ''Superintendent, Southern Pacific Transportation Company, at Oakland'' and add, in their place, the words ''San Mateo Transportation Department, at San Carlos''.

34. In § 117.393, in paragraph (b) introductory text and (b)(4), remove the words ''Chicago and Northwestern'' and add, in their place, the words ''Union Pacific''; and revise the section heading to read as follows:

**§ 117.393 Illinois Waterway.**

* * * * *

**§ 117.395 [Amended]**

35. In § 117.395, redesignate paragraphs (a) and (b) as § 117.393(c) and (d) and remove the section heading.

**§ 117.401 [Amended]**

36. In § 117.401, remove the number ''0.9'' and add, in its place, the number ''0.85''.

**§ 117.488 [Amended]**

37. In § 117.488(a), add the words ''CSX Transportation'' immediately preceding the words ''railroad bridge''.

**§ 117.501 [Amended]**

38. In § 117.501(b), remove the words ''Southern Pacific Transportation Company railroad/vehicular'' and add, in their place, the words ''St. John Road''.

**§ 117.667 [Amended]**

39. In § 117.667(a), remove the words ''Chicago and Northwestern'' and add, in their place, the words ''Union Pacific''.

**§ 117.720 [Amended]**

40. In § 117.720 introductory text, remove the words ''Cape May County Bridge Commission bridge'' and add, in their place, the words ''County of Cape May bridge''.

**§ 117.889 [Amended]**

41. In § 117.889, in paragraph (b), remove the words ''Southern Pacific'' and add, in their place, the words ''Central Oregon and Pacific''; and revise the section heading to read as follows:

**§ 117.889 Siuslaw River.**

* * * * *

**§ 117.893 [Amended]**

42. In § 117.893(b), remove the words ''Southern Pacific'' and add, in their place, the words ''Central Oregon and Pacific''.

**§ 117.943 [Amended]**

43. In § 117.943, remove the words ''Seaboard System'' and add, in their place, the word ''Clarksville''.

44. Revise § 117.989 to read as follows:

**§ 117.989 Trinity River.**

The draws of the Union Pacific Railroad bridges, mile 41.4 at Liberty, mile 54.8 at Kenefick, mile 117.3 at Goodrich, mile 181.8 at Riverside, and the Burlington Northern Santa Fe railroad bridge, mile 96.2 at Romayor, need not be opened for the passage of vessels.

**§ 117.997 [Amended]**

45. In § 117.997, in paragraphs (a)(2)(ii) and (c)(2)(ii), remove the number ''(804)'' and add, in its place, the number ''(757)''.

**§ 117.1031 [Amended]**

46. In § 117.1031, remove paragraph (a) and remove the designator for paragraph (b).

**§ 117.1063 [Amended]**

47. In § 117.1063(b), remove the words ''Burlington Northern railroad'' and add, in their place, the words ''Washington State Parks and Recreation Commission''.

**§ 117.1081 [Amended]**

48. In § 117.1081, remove the words ''Chicago, Milwaukee, St. Paul and Pacific'' and add, in their place, the words ''CP Rail''.

49. In Appendix A to Part 117, revise the entries for Arkansas, Illinois, Iowa, Kansas, Kentucky, Minnesota, Missouri, South Carolina, Tennessee, and Wisconsin to read as follows:

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| Arkansas | | | | | | |
| Arkansas Waterway | 67.4 | Rob Roy | Union Pacific RR | KTA 435 | 16 | |
| | 118.2 | Little Rock | Union Pacific RR | KSK 392 | 16 | 13 |
| | 118.7 | Little Rock | Union Pacific RR | KSK 392 | 16 | 13 |
| | 119.6 | Little Rock | Union Pacific RR | KSK 392 | 16 | 13 |
| White River | 98.9 | Clarendon | Union Pacific RR | KUF 653 | 16 | 14 |
| | 196.3 | Clarendon | Union Pacific RR | KVY 684 | 13 | 13 |
| | 254.8 | Clarendon | Union Pacific RR | KIZ 553 | 16 | 13 |

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES—Continued

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| * * | * | * | * | * | * | |
| Illinois | | | | | | |
| Illinois Waterway | 21.6 | Hardin | Illinois DOT, SR16 | WZQ 8761 | 16 | 14 |
| | 43.2 | Pearl | Gateway Western RR | KLU 797 | 16 | 14 |
| | 56.0 | Florence | Illinois DOT, US36 | WZQ 8761 | 16 | 14 |
| | 61.4 | Valley City | Norfolk Southern RR | KTR 857 | 16 | 14 |
| | 88.8 | Beardstown | Burlington Northern Santa Fe RR. | KLU 801 | 16 | 14 |
| | 151.2 | Pekin | Union Pacific RR | KVF 831 | 16 | 14 |
| | 160.7 | Peoria | Peoria and Pekin Union Railway Co. | WQX 651 | 16 | 14 |
| | 224.7 | La Salle | Illinois DOT, US51 | WZQ 8761 | 16 | 13 |
| | 239.4 | Ottawa | Burlington Northern Santa Fe RR. | WRD 810 | 16 | 14 |
| | 285.8 | Rockdale | Brandon Road, Illinois DOT. | WZQ 8761 | 16 | 13 |
| | 287.3 | Joliet | McDonough Highway, Illinois DOT. | WZQ 8761 | 16 | 13 |
| | 287.6 | Joliet | CSX Transportation | KUF 907 | 16 | 14 |
| | 288.7 | Joliet | Ruby Street, Illinois DOT | WZQ 8761 | 16 | 13 |
| Upper Mississippi River | 481.4 | Rock Island | Burlington Northern Santa Fe RR. | WUD 715 | 16 | 14 |
| | 482.9 | Rock Island | Department of the Army | AAF 274 | 16 | 14 |
| Iowa | | | | | | |
| | 364.0 | Keokuk | City of Keokuk US136 | KLG 365 | 16 | 14 |
| Upper Mississippi River | 383.9 | Fort Madison | Burlington Northern Santa Fe RR. | KRS 859 | 13 | 13 |
| | 403.1 | Burlington | Burlington Northern Santa Fe RR. | KJC 779 | 16 | 13 |
| | 518.0 | Clinton | Union Pacific RR | KUF 735 | 16 | 13 |
| | 535.0 | Sabula | I+M Rail Link | KEA 997 | 16 | 13 |
| | 579.9 | Dubuque | Illinois Central Gulf RR | KQ 9042 | 16 | 14 |
| Missouri River | 618.3 | Council Bluffs | Illinois Central Gulf RR | KD 2870 | 16 | 13 |
| Kansas | | | | | | |
| Missouri River | 422.5 | Atchison | Union Pacific RR | KTD 426 | 16 | 14 |
| Kentucky | | | | | | |
| Green River | 8.3 | Spottsville | CSX Transportation | KT 4181 | 16 | 13 |
| Ohio River | 604.4 | Louisville | Conrail | KUZ 381 | 13 | 13 |
| | 606.8 | Louisville | 27th St., McAlpine Lock, Louisville Gas and Electric Co. | WUE 241 | 16 | 14 |
| | 606.8 | Louisville | 27th St., McAlpine Lock (Bascule), U.S. Army Engineer District, Louisville. | WUE 241 | 16 | 14 |
| * * | * | * | * | * | * | |
| Minnesota | | | | | | |
| Upper Mississippi River | 813.7 | Hastings | CP Rail | KTD 538 | 16 | 14 |
| | 835.7 | Newport | Union Pacific RR | KUZ 544 | 16 | 14 |
| | 839.2 | St. Paul | Union Pacific RR | KUZ 546 | 16 | 14 |
| | 841.4 | Omaha | Union Pacific RR | KUZ 545 | 16 | 14 |
| Duluth-Superior Harbor, MN-WI. | 0.25 | Duluth | Minnesota Avenue, Duluth. | KAN 388 | 16 | 13 |
| * * | * | * | * | * | * | |
| Missouri | | | | | | |
| Upper Mississippi River | 282.1 | Louisiana | Gateway Western RR | KLU 798 | 16 | 14 |
| | 309.9 | Hannibal | Norfolk Southern RR | KUZ 448 | 16 | 14 |
| Missouri River | 359.4 | Kansas City | CP Rail | KVY 575 | 16 | 13 |
| | 365.6 | Kansas City | A–S–B, Burlington Northern RR. | KQU 500 | 16 | 14 |
| | 366.1 | Hannibal | Union Pacific RR | KQU 500 | 16 | 14 |
| | 448.2 | St. Joseph | Northeast Kansas and Missouri RR. | KTD 403 | 16 | 14 |

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES—Continued

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| South Carolina | | | | | | |
| Intracoastal WW | 347.3 | Myrtle Beach Little River | SC, US17 | KT 5433 | 9 | 9 |
| | 371.0 | Socastee | SC, SR544 | KT 5438 | 9 | 9 |
| | 462.2 | Sullivans Island | Ben Sawyer, SC, SR703 | KT 5438 | 9 | 9 |
| | 470.8 | Charleston | Wappoo Creek, SC, SR171. | KT 5438 | 9 | 9 |
| | 536.0 | Beaufort | Lady's Island, SC, US21 | KT 5439 | 9 | 9 |
| Savannah River | 21.6 | Savannah | Houlihan, GA DOT | WHV 879 | 9 | 9 |
| Savannah River | 60.9 | Clyo | Seaboard System RR | WKB 679 | 9 | 9 |
| Tennessee | | | | | | |
| Cumberland River | 126.5 | Clarksville | J.R. Corman | KF 2204 | 16 | 13 |
| | 185.2 | Bordeaux | Cheatham County Rail Authority. | KX 6366 | 16 | 13 |
| | 190.4 | Nashville | CSX Transportation | KQ 7197 | 16 | 13 |
| Tennessee River | 100.5 | New Johnsonville | CSX Transportation | KC 9465 | 16 | 13 |
| * | * | * | * | * | * | * |
| Wisconsin | | | | | | |
| Upper Mississippi River | 699.8 | LaCrosse | CP Rail | KVY 631 | 16 | 13 |
| St. Croix River | 0.2 | Prescott | Burlington Northern Santa Fe RR. | KJC 782 | 16 | 14 |
| | 0.3 | Prescott | Wisconsin and Minnesota | KD 2829 | 7 | 14 |
| | 17.3 | Hudson | Union Pacific RR | KUZ 549 | 16 | 14 |

**§§ 117.101, 117.383, 117.393, 117.667, 117.861, 117.869, 117.887, 117.1035, 117.1037, 117.1041, 117.1051, 117.1053, 117.1058, and 117.1059 [Amended]**

50. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Burlington Northern'' and add, in their place, the words ''Burlington Northern Santa Fe'' in the following sections:

(a) Section 117.101(a);
(b) Section 117.383;
(c) Section 117.393(a) introductory text;
(d) Section 117.667(a);
(e) Section 117.861;
(f) Section 117.869(c) introductory text, and (c)(3);
(g) Section 117.887;
(h) Section 117.1035(c);
(i) Section 117.1037(a) introductory text;
(j) Section 117.1041(b)(1) and (b)(2);
(k) Section 117.1051(c);
(l) Section 117.1053;
(m) Section 117.1058(a) and (d); and
(n) Section 117.1059(e) and (f).

**§§ 117.101 and 117.686 [Amended]**

51. In addition to the amendments set forth above, in 33 CFR part 117, remove the word ''Gulf'' in the following sections:

(a) Section 117.101(b); and
(b) Section 117.686(a).

**§§ 117.101, 117.105, 117.107, 117.109, 117.113, 117.271, 117.361, and 117.415 [Amended]**

52. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Seaboard System'' and add, in their place, the words ''CSX Transportation'' in the following sections:

(a) Section 117.101(d);
(b) Section 117.105;
(c) Section 117.107;
(d) Section 117.109;
(e) Section 117.113;
(f) Section 117.271(a);
(g) Section 117.361; and
(h) Section 117.415(a) and (b).

**§§ 117.115 and 117.511 [Amended]**

53. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Southern Railway'' and add, in their place, the words ''Norfolk Southern Railroad'' in the following sections:

(a) Section 117.115(b); and
(b) Section 117.511(a).

**§§ 117.125, 117.953, 117.957, 117.959, 117.969, 117.975, 117.984, and 117.991 [Amended]**

54. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Missouri Pacific'' and add, in their place, the words ''Union Pacific'' in the following sections:

(a) Section 117.125(a) and (e);
(b) Section 117.953(b);
(c) Section 117.957 introductory text;
(d) Section 117.959;
(e) Section 117.969;
(f) Section 117.975;
(g) Section 117.984; and
(h) Section 117.991 introductory text.

**§§ 117.151, 117.177, 117.185, 117.441, 117.489, 117.493, 117.501, 117.871, 117.897, 117.955, and 117.987 [Amended]**

55. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Southern Pacific'' and add, in their place, the words ''Union Pacific'' in the following sections:

(a) Section 117.151;
(b) Section 117.177;
(c) Section 117.185;
(d) Section 117.441;
(e) Section 117.489(a);
(f) Section 117.493(a);
(g) Section 117.501(c);
(h) Section 117.871;
(i) Section 117.897(b);
(j) Section 117.955(b); and
(k) Section 117.987.

**§§ 117.171 and 117.971 [Amended]**

56. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Atchison, Topeka and Santa Fe'' and add, in their place, the words ''Burlington Northern Santa Fe'' in the following sections:

(a) Section 117.171(b); and
(b) Section 117.971.

**§§ 117.439 and 117.465 [Amended]**

57. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Southern Pacific'' and add, in their place, the words ''Burlington Northern Santa Fe'' in the following sections:

(a) Section 117.439(b); and
(b) Section 117.465(f).

**§§ 117.449 and 117.487 [Amended]**

58. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Texas and Pacific'' and add, in their place, the words ''Union Pacific'' in the following sections:

(a) Section 117.449(a); and

(b) Section 117.487(b).

**§§ 117.637 and 117.855 [Amended]**

59. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Chessie System'' and add, in their place, the words ''CSX Transportation'' in the following sections:

(a) Section 117.637(b); and

(b) Section 117.855(c) introductory text.

**§§ 117.865 and 117.881 [Amended]**

60. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Burlington Northern'' and add, in their place, the words ''Willamette and Pacific'' in the following sections:

(a) Section 117.865; and

(b) Section 117.881(a).

**§§ 117.1047 and 117.1065 [Amended]**

61. In addition to the amendments set forth above, in 33 CFR part 117, remove the words ''Burlington Northern'' and add, in their place, the words ''Puget Sound and Pacific'' in the following sections:

(a) Section 117.1047(b); and

(b) Section 117.1065(b).

## PART 118—BRIDGE LIGHTING AND OTHER SIGNALS

62. The authority citation for part 127 continues to read as follows:

**Authority:** 33 U.S.C. 494; 14 U.S.C. 85, 633; 49 CFR 1.46(b) and (c).

**§ 118.60 [Amended]**

63. In § 118.60, remove the words ''Annex I, Appendix A of 33 CFR Part 81'' and add, in their place, the words ''33 CFR Part 84—Annex 1''.

## PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

64. The authority citation for part 130 continues to read as follows:

**Authority:** 33 U.S.C. 2716, 2716a; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

## PART 130—[REMOVED]

65. Remove part 130.

## PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

66. The authority citation for part 135 continues to read as follows:

**Authority:** 33 U.S.C. 2701–2719; E.O. 12777, 56 FR 54757; 49 CFR 1.46.

**§ 135.9 [Amended]**

67. In § 135.9, remove the words ''Funds Management Branch, Commandant (G–MER–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001'' and add, in their place, the words ''U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203–1804''.

**§ 135.305 [Amended]**

68. In § 135.305(a)(1), remove the words ''400 Seventh Street SW., Washington, D.C. 20590'' and add, in their place, the words ''2100 Second Street, SW., Washington, DC 20593–0001''.

## PART 141—PERSONNEL

69. The authority citation for part 141 continues to read as follows:

**Authority:** 43 U.S.C. 1356; 49 CFR 1.46(z).

**§ 141.15 [Amended]**

70. In § 141.15(a), remove the words ''On or after April 5, 1983, each'' and add, in their place, the word ''Each''.

## PART 143—DESIGN AND EQUIPMENT

71. The authority citation for part 143 continues to read as follows:

**Authority:** 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46; section 143.210 is also issued under 14 U.S.C. 664 and 31 U.S.C. 9701.

**§ 143.15 [Amended]**

72. In § 143.15(b), remove the words ''(33 CFR Part 87, Appendix A)''.

## PART 144—LIFESAVING APPLIANCES

73. The authority citation for part 144 continues to read as follows:

**Authority:** 43 U.S.C. 1333d; 46 U.S.C. 3102(a); 46 CFR 1.46.

**§ 144.01–20 [Amended]**

74. In § 144.01–20, in paragraph (b), remove the words ''On or before July 1, 1963, all'' and add, in their place, the word ''All''; and in paragraphs (c) and (d), remove the words, ''after October 5, 1982,''.

## PART 146—OPERATIONS

75. The authority citation for part 146 continues to read as follows:

**Authority:** 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

**§ 146.140 [Amended]**

76. In § 146.140(a), remove the words ''For facilities existing on June 19, 1989, the EEP must be submitted to the OCMI having jurisdiction over the facility before December 18, 1989. For facilities not existing on June 19, 1989, the'' and add, in their place, the word ''The''.

## PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

### Subpart A—Implementation of MARPOL 73/78 and the Protocol on Environmental Protection to the Antarctic Treaty as It Pertains to Pollution From Ships

77. The authority citation for subpart A continues to read as follows:

**Authority:** 33 U.S.C. 1321 and 1903; Pub. L. 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp. p. 351; 49 CFR 1.46.

**§ 151.10 [Amended]**

78. In § 151.10, remove paragraph (i).

79. Revise § 151.17(b)(1) to read as follows:

**§ 151.17 Surveys.**

* * * * *

(b)* * *

(1) An initial survey conducted before the ship is put into service.

* * * * *

**§ 151.19 [Amended]**

80. In § 151.19, remove paragraph (f).

**§ 151.27 [Amended]**

81. In § 151.27(a), remove the last sentence.

## PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

82. The authority citation for part 153 continues to read as follows:

**Authority:** 14 U.S.C. 633; 33 U.S.C. 1321; 42 U.S.C. 9615; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.45 and 1.46.

**§ 153.205 [Amended]**

83. In § 153.205, in Table 1 titled ''Addresses and Telephone Numbers of Coast Guard District Offices and EPA Regional Offices,'' in the entry for the 11th Coast Guard District, remove the address and phone number ''union Bank Bldg., 400 Oceangate, Long Beach, CA 90822–5399. 213–499–5330'' and add, in its place, the address ''Building 50–6, Coast Guard Island, Alameda, CA 94501, telephone 510–437–2940''

84. Revise § 153.307 to read as follows:

**§ 153.307 Penalties.**

Any person who fails or refuses to comply with the provisions of this part, or to comply with an order issued by the Federal On-Scene Coordinator under 33 U.S.C. §§ 1321(c) or (e)(1)(B), is liable for a civil penalty per day of violation or an amount equal to three times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

## PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

85. The authority citation for part 154 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

**§ 154.804 [Amended]**

86. In § 154.804, remove and reserve paragraph (b).

**§ 154.814 [Amended]**

87. In § 154.814(h), remove the words ''paragraphs (e) and (f)'' and add, in their place, the words ''paragraphs (d) and (f)''.

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

88. The authority citation for part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

**§ 155.240 [Amended]**

89. In § 155.240, in paragraph (a), remove the words ''by no later than January 21, 1995,''; and in paragraph (d), redesignate paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3).

**§ 155.245 [Amended]**

90. In § 155.245(a), remove the words ''by no later than January 21, 1995,''.

**§ 155.310 [Amended]**

91. In § 155.310(c), remove the words ''By January 21, 1997, all'' and add, in their place, the word ''All''.

**§ 155.350 [Amended]**

92. In § 155.350, remove paragraph (e).

**§ 155.360 [Amended]**

93. In § 155.360, remove paragraph (f).

**§ 155.370 [Amended]**

94. In § 155.370, remove paragraph (g).

**§ 155.400 [Amended]**

95. In § 155.400, remove paragraph (d).

**§§ 155.205, 155.210, 155.215, 155.220, 155.225, and 155.230 [Amended]**

96. In addition to the amendments set forth above in 33 CFR part 155, remove the words ''By June 20, 1994,'' and capitalize the first word immediately following each deleted phrase in the following places:

(a) Section 155.205(a);
(b) Section 155.210(a);
(c) Section 155.215(a);
(d) Section 155.220(a);
(e) Section 155.225; and
(f) Section 155.230(a).

## PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

97. The authority citation for part 157 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

**§ 157.10a [Amended]**

98. In § 157.10a, in paragraph(a), remove the words ''Not later than June 1, 1981, except as allowed in paragraph (b) of this section, an'' and add, in their place, the word ''An''; remove and reserve paragraph (b); in paragraph (c), remove the words ''Not later than June 1, 1981, an'' and add, in their place, the word ''An''; in paragraph (d), remove the word '', (b),''; and in paragraph (e), remove the word '', (b),''.

**§ 157.12 [Amended]**

99. In § 157.12, remove paragraphs (d) and (e).

**§ 157.100 [Amended]**

100. In § 157.100(b), remove the words ''2100 Second Street SW., Washington, DC 20593'' and add, in their place, the words ''400 7th Street, SW., Washington, DC 20590–0001''.

**§ 157.200 [Amended]**

101. In § 157.200(b), remove the words ''2100 Second St., SW., Washington, DC 20593'' and add, in their place, the words ''400 7th Street, SW., Washington, DC 20590–0001''.

**§ 157.410 [Amended]**

102. In § 157.410 introductory text, remove the words ''No later than August 5, 1995, each'' and add, in their place, the word ''Each''.

## PART 160—PORTS AND WATERWAYS SAFETY–GENERAL

103. The authority citation for part 160 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 49 CFR 1.46.

**§ 160.109 [Amended]**

104. In § 160.109(a)(1), remove the words ''as those terms are defined in section 4417a of the Revised Statutes, as amended (46 U.S.C. 391a)'' and add, in their place, the words ''as those terms are defined in 46 U.S.C. 2101''.

**§ 160.113 [Amended]**

105. In § 160.113(a), remove the words ''may prohibit any vessel subject to the provisions of section 4417a of the Revised Statutes (46 U.S.C. 391a)'' and add, in their place, the words ''may prohibit any vessel, subject to the provisions of chapter 37 of Title 46, U.S. Code,''.

**§ 160.115 [Amended]**

106. In § 160.115, remove the words ''46 U.S.C. 91'' and add, in their place, the words ''46 U.S.C. App. 91''.

## PART 161—VESSEL TRAFFIC MANAGEMENT

107. The authority citation for part 161 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 33 U.S.C. 1223; 49 CFR 1.46.

**§ 161.30 [Amended]**

108. In § 161.30, remove the number ''606'' and add, in its place, the number ''606.8''.

**§ 161.40 [Amended]**

109. In Table 161.40(c), VTS BERWICK BAY REPORTING POINTS, under the heading ''Latitude/longitude,'' remove the symbol ''–'' and add, in its place, the symbol ''°'', in each entry.

**§ 161.45 [Amended]**

110. In § 161.45(a), remove the numbers ''45–57′N.'' and ''46–38.7′N.'' and add, in their place, the numbers ''45°57′ N.'' and ''46°38.7′N.''.

**§ 161.55 [Amended]**

111. In § 161.55, in the introductory text, remove the numbers ''48–23′08″N., 124–43′37″W.'', ''48–23′30″N., 124–44′12″W.'', and ''49–00′06″N., 122–45′18″W.'' and add, in their place, the numbers ''48°23′08″N., 124°43′37″W.'', ''48°23′30″N., 124°44′12″W.'', and ''49°00′06″N., 122°45′18″W.''; in paragraph (b), remove the numbers ''48–35′45″N.'', ''48–23′30″N.'', ''48–35′45″N., 124–47′30″W.'', ''48–23′30″N., 124–48′37″W.'', and ''49–N.'' and add, in their place, the numbers

''48°35′45″N.'', ''48°23′30″N.'', ''48°35′45″N., 124°47′30″W.'', ''48°23′30″N., 124°48′37″W.'', and ''49°N.''; in paragraph (c), remove the numbers ''48–26′24″N., 122–45′12″W.'' and ''48–40′34″N., 122–42′44″W.'' and add, in their place, the numbers ''48°26′24″N., 122°45′12″W.'' and ''48°40′34″N., 122°42′44″W.''; and redesignate paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d).

**§ 161.60 [Amended]**

112. In § 161.60, in paragraph (a), remove the number ''146–30′ W. and 147–20′ W.'' and add, in its place, the number ''146°30′W. and 147°20′W.''; in paragraph (c)(1), remove the number ''61–N.'' and add, in its place, the number ''61°N.''; and revise paragraph (b) to read as follows:

**§ 161.60 Vessel Traffic Service Prince William Sound.**

* * * * *

(b) The Valdez Narrows VTS Special Area consists of those waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307° True from Tongue Point at 61°02′06″N., 146°40′W.; and southwest of a line bearing 307° True from Entrance Island Light at 61°05′06″N., 146°36′42″W.

* * * * *

## PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

113. The authority citation for part 162 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 49 CFR 1.46.

**§ 162.105 [Amended]**

114. In § 162.105(a), remove the words ''Second Coast Guard District'' and add, in their place, the words ''Eighth Coast Guard District''.

**§ 162.117 [Amended]**

115. In § 162.117(a), remove the numbers ''45–57′ N.'' and ''46–38.7′ N.'' and add, in their place, the numbers ''45°5′N.'' and ''46°38.7′N.''.

**§ 162.205 [Amended]**

116. In § 162.205(b)(5), remove the words ''Commander, 12th U.S. Coast Guard District'' and add, in their place, the words ''District Commander''.

**§ 162.240 [Amended]**

117. In § 162.240(d), remove the words ''Captain of the Port, Southeast Alaska. The office of the Captain of the Port, Southeast Alaska, is located in Juneau, Alaska'' and add, in their place, the words ''Commanding Officer, Marine Safety Office, Juneau, Alaska''.

## PART 163—TOWING OF BARGES

118. Revise the authority citation for part 163 to read as follows:

**Authority:** 33 U.S.C. 152, 2071; 49 CFR 1.46(n).

## PART 164—NAVIGATION SAFETY REGULATIONS

119. The authority citation for part 164 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

**§ 164.37 [Amended]**

120. In § 164.37(b), remove the words ''Section 5 of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391a)'' and add, in their place, the words '' 46 U.S.C. 3708''.

**§ 164.38 [Amended]**

121. In § 164.38, revise paragraphs (b) introductory text, (b)(2), and (b)(3); and remove and reserve paragraph (c) to read as follows:

**§ 164.38 Automatic radar plotting aids (ARPA).**

* * * * *

(b) An Automatic Radar Plotting Aid (ARPA) that complies with the standard for such devices adopted by the International Maritime Organization in its ''Operational Standards for Automatic Radar Plotting Aids'' (Appendix A), and that has both audible and visual alarms, must be installed as follows:

(1) * * *

(2) Each tank vessel of 10,000 gross tons or more operating on the navigable waters of the United States must be equipped with an ARPA.

(3) Each self-propelled vessel of 15,000 gross tons or more that is not a tank vessel, and is not carrying oil or hazardous material in bulk as cargo or in residue operating on the navigable waters of the United States, and was constructed before September 1, 1984, must be equipped with an ARPA, except when it is operating on the Great Lakes and their connecting and tributary waters.

* * * * *

**§ 164.38 Appendix A [Amended]**

122. In Appendix A to § 164.38, in paragraph 3.9, remove the word ''Connexions'' and add, in its place, the word ''Connections''; in paragraph 3.9.1, remove the word ''connexion'' and add, in its place, the word ''connection''; and in the undesignated heading to ANNEX 1 to APPENDIX A— DEFINITIONS OF TERMS TO BE USED ONLY IN CONNEXION WITH ARPA PERFORMANCE STANDARDS, remove the word ''CONNEXION'' and add, in its place, the word ''CONNECTION''.

123. Revise § 164.40(a) to read as follows:

**§ 164.40 Devices to indicate speed and distance.**

(a) Each vessel required to be fitted with an Automatic Radar Plotting Aid (ARPA) under § 164.38 of this part must be fitted with a device to indicate speed and distance of the vessel either through the water or over the ground.

* * * * *

**§ 164.41 [Amended]**

124. In § 164.41(a)(1), remove the last two sentences and add, in their place, the words ''Each receiver installed must be labeled with the information required under paragraph (b) of this section''.

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

125. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

**§ 165.120 [Amended]**

126. In § 165.120, in paragraph (a), remove the numbers ''42–33–10 North'' and ''71–01–23 West'' and add, in their place, the numbers ''42°33′10″N.'' and ''71°01′23″W.''; and in paragraph (b)(4), remove the numbers ''42–23–09 North, 71–01–31 West'' and ''42–23–05 North, 71–01–31 West'' and add, in their place, the numbers ''42°23′09″N., 71°01′31″W.'' and ''42°23′05″N., 71°01′31″W.''.

**§ 165.121 [Amended]**

127. In § 165.121(a)(1), remove the numbers ''41–25N.'' and ''71–23W.'' and add, in their place, the numbers ''41°25′N.'' and ''71°23′W.''.

**§ 165.701 [Amended]**

128. In § 165.701(a), remove the number ''28–30.95N, 80–37.6W'' and add, in its place, the number ''28°30.95′N., 80°37.6′W.''.

**§ 165.713 [Amended]**

129. In § 165.713(a), remove the numbers ''32°–47.2′N'' and ''78°–57.8′W'' and add, in their place, the numbers ''32°47.2′N.'' and ''78°57.8′W''.

130. Revise § 165.752(a) to read as follows:

**§ 165.752 Sparkman Channel, Tampa, Florida-regulated navigation area.**

(a) A regulated navigation area is established to protect vessels from limited water depth in Sparkman

Channel caused by an underwater pipeline. The regulated navigation area is in Sparkman Channel between the lines connecting the following points (referenced in NAD 83):

| | Latitude | Longitude | | Latitude | Longitude |
|---|---|---|---|---|---|
| 1: | 27°56′20.5″N | 082°26′42.0″W | to | 27°56′19.3″N | 82°26′37.5″W |
| 2: | 27°55′32.0″N | 082°26′54.0″W | to | 27°55′30.9″N | 82°26′49.1″W |

* * * * *

**§ 165.805 [Amended]**

131. In § 165.805, in paragraphs (a)(1) and (a)(2), remove the number ''30 06′38″N, 93 17′34″W'' and add, in its place, the number ''30°06′38″N., 93°17′34″W.''.

**§ 165.821 [Amended]**

132. In § 165.821, in paragraph (b), remove the words ''(c)(i) through (iv)'' and add, in their place, the words ''(c)(1) through (4)''; and in paragraph (c), redesignate paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4).

133. Revise § 165.1108(a) to read as follows:

**§ 165.1108 San Diego Bay, California.**

(a) *Location.* The area encompassed by the following geographic coordinates is a regulated navigation area:

| | |
|---|---|
| 32°41′24.6″N | 117°14′21.9″W |
| 32°41′34.2″N | 117°13′58.5″W |
| 32°41′34.2″N | 117°13′37.2″W |

Thence south along the shoreline to

| | |
|---|---|
| 32°41′11.2″N | 117°13′31.3″W |
| 32°41′11.2″N | 117°13′58.5″W |

Thence north along the shoreline to the point of origin.

Datum: NAD 1983.

* * * * *

134. In § 165.1110 revise paragraphs (a)(1) and (a)(2) to read as follows:

**§ 165.1110 Safety Zone: Los Angeles Harbor; San Pedro Bay, CA.**

(a) * * *

(1) *Pier 400:* Those waters of Los Angeles Harbor and San Pedro Bay in the vicinity of Pier 400 as defined by the lines connecting the following coordinates.

| *Latitude* | *Longitude* |
|---|---|
| 33°44′29.06″N | 118°14′17.25″W |
| 33°43′48.06″N | 118°13′59.25″W |
| 33°43′03.50″N | 118°14′11.72″W |
| 33°42′45.17″N | 118°15′04.78″W |
| 33°43′00.00″N | 118°15′29.90″W |
| 33°43′21.94″N | 118°15′41.51″W |
| 33°43′45.04″N | 118°15′30.81″W |
| 33°43′58.55″N | 118°14′44.38″W |
| 33°44′03.70″N | 118°14′26.65″W |

and thence to the point of origin. All coordinates use Datum: NAD 83.

(2) *Shallow Water Habitat Extension:* Those waters of Los Angeles Harbor and San Pedro Bay as defined by the lines connecting the following coordinates.

| *Latitude* | *Longitude* |
|---|---|
| 33°42′32.10″N | 118°15′00.00″W |
| 33°42′49.84″N | 118°15′41.51″W |
| 33°42′47.06″N | 118°15′58.26″W |
| 33°42′24.99″N | 118°15′23.59″W |

and thence to the point of origin. All coordinates use Datum: NAD 83.

* * * * *

**§ 165.1402 [Amended]**

135–136. In § 165.1402(a), remove the number ''144.39′28.1″ E'' and add, in its place, the number ''144°39′28.1″ E.''.

**§ 165.1703 [Amended]**

137. In § 165.1703(a), remove the numbers ''61.07–5 N'' and ''146.18 W'' and add, in their place, the numbers ''61°07′5″ N.'' and ''146°18′ W.''

138. In § 165.1704, in paragraph (a), remove the numbers ''146–30′ W. and 147–20′ W.'' and add, in their place, the numbers ''146°30′ W. and 147°20′ W.''; and revise paragraph (b) to read as follows:

**§ 165.1704 Prince William Sound, Alaska-regulated navigation area.**

* * * * *

(b) Within the regulated navigation area described in paragraph (a) of this section, § 161.60 of this chapter establishes a VTS Special Area for the waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307° True from Tongue Point at 61°02′06″ N., 146°40′ W.; and southwest of a line bearing 307° True from Entrance Island Light at 61°05′06″ N., 146°36′42″ W.

* * * * *

139. In § 165.1705, revise paragraph (a) to read as follows:

**§ 165.1705 Ketchikan Harbor, Ketchikan, Alaska-safety zone.**

(a) That portion of Ketchikan Harbor, Ketchikan, Alaska enclosed by the following boundary lines is a Safety Zone: A line from Thomas Basin Entrance Light ''2'', latitude 55°20.3′ N., longitude 131°38.5′ W., to East Channel Lighted Buoy ''4A'', latitude 55°20.4′ N., longitude 131°38.9′ W., to Pennock Island Reef Lighted Buoy ''PR'', latitude 55°20.3′ N., longitude 131°40′ W., to Wreck Lighted Buoy ''WR6'', latitude 55°20.7′ N., longitude 131°40.3′ W., then following a line bearing 064 degrees true to shore. This zone is effective 24 hours per day from 1 May through 30 September, annually. Annual notices of these regulations will be issued in Local Notices to Mariners.

* * * * *

## PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

140. The authority citation for part 174 continues to read as follows:

**Authority:** 46 U.S.C. 6101, 12302; 49 CFR 1.46.

**§ 174.5 [Amended]**

141. In § 174.5, remove the words ''in this part, 46 U.S.C. 6102, and in Chapter 123 of Title 46 U.S. Code relating to numbering and casualty reporting'' and add, in their place, the words ''of this part, 46 U.S.C. 6102, and 46 U.S.C. Chapter 123''.

142. Revise § 174.121 to read as follows:

**§ 174.121 Forwarding of casualty or accident reports.**

Within 30 days of the receipt of a casualty or accident report, each State that has an approved numbering system must forward a copy of that report to the Commandant (G–OCC), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

## PART 175—EQUIPMENT REQUIREMENTS

143. The authority citation for part 175 continues to read as follows:

**Authority:** 46 U.S.C. 4302; 49 CFR 1.46.

**§ 175.17 [Amended]**

144. In § 175.17, remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

**§ 175.101 [Amended]**

145. In § 175.101, remove the designator for paragraph (a) and remove the words ‘‘, after 31 December 1980,’’.

**§ 175.135 [Amended]**

146. In § 175.135, remove paragraph (a) and remove the designator for paragraph (b).

## PART 181—MANUFACTURER REQUIREMENTS

147. The authority citation for part 181 continues to read as follows:

**Authority:** 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

148. Revise § 181.21(a) to read as follows:

**§ 181.21 Purpose, applicability and effective dates.**

(a) This subpart prescribes the requirements for identification of boats to which 46 U.S.C. 4301 applies.

* * * * *

## PART 183—BOATS AND ASSOCIATED EQUIPMENT

149. The authority citation for part 183 continues to read as follows:

**Authority:** 46 U.S.C. 4302; 49 CFR 1.46.

### Subpart N—[Removed and Reserved]

150. Remove and reserve subpart N.

Dated: June 19, 1998.

**Joseph J. Angelo,**

*Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 98–17268 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD08–98–035]**

**RIN 2115–AE46**

## Special Local Regulations; City of Pittsburgh Independence Eve Celebration Allegheny River Mile 0.0–0.5, Monongehela River Mile 0.0–0.2 and Ohio River Mile 0.0–0.9

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation.

**SUMMARY:** This notice implements the special local regulations of 33 CFR 100.201, ‘‘Annual marine events within the Second Coast Guard District’’, Table One, number 15, listed as ‘‘City of Pittsburgh Independence Eve Celebration.’’ In 1996, the Second Coast Guard District was disestablished, and the Eighth District boundaries were expanded to include the prior Second District area of responsibility. The Eight District Commander now exercises authority over the combined geographical region. 61 FR 29958 (June 13, 1996). This event will be held on July 4, 1998 at Pittsburgh, Pennsylvania. Implementation of § 33 CFR 100.201 (Table One, 15) is necessary to provide for the safety of life on navigable waters during the event.

**DATES:** 33 CFR 100.201 (Table One, 15) is effective from 7 p.m. until 12 p.m. on July 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** LT T.J. Ferring, Marine Safety Office, Pittsburgh, PA, Tel:(412) 644–5808.

**SUPPLEMENTARY INFORMATION:** The City of Pittsburgh Independence Eve Celebration is an annual river festival sponsored by Citiparks. These special local regulations permit the Coast Guard to control vessel traffic in order to ensure the safety of spectators and participants. Spectators will be able to view the event from areas designated by the sponsor. Non-participating vessels will be able to transit the area during breaks between scheduled events.

Dated: June 11, 1998.

**A.L. Gerfin, Jr.,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.*

[FR Doc. 98–17368 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–98–070]**

**RIN 2115–AA97**

## Safety Zone: Independence Day Celebration Fireworks, Wards Island, East River, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Independence Day Celebration fireworks program located on Wards Island, East River, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the East River, New York.

**DATES:** This rule is effective from 8:45 p.m. until 10:15 p.m. on Wednesday, July 1, 1998.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4195.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the fact that plans for this event were recently finalized, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation’s effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for pubic entertainment.

### Background and Purpose

The New York Power Authority has submitted an Application for Approval of Marine Event to hold a fireworks program on the waters of the East River, at Wards Island, New York. This regulation establishes a safety zone in all waters of the East River, within a 150 yard radius of the land shoot at approximate position 40°46′55.5″N 073°55′33″W (NAD 1983), approximately 200 yards northeast of the Triboro Bridge. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Wednesday, July 1, 1998. The safety zone prevents vessels from transiting this portion of the East River, and it is needed to protect boaters from the hazards associated with fireworks launched from shore in the area.

### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The

Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that marine traffic will still be able to transit through the East River, and advance notifications which will be made.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

**Federalism**

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–070 to read as follows:

**§ 165.T01–070 Safety Zone: Independence Day Celebration Fireworks, Wards island, East River, New York.**

(a) *Location.* The following area is a safety zone: all waters of the East River within a 150 yard radius of the land shoot at Wards Island, New York in approximate position 40° 46′ 55.5″N 073° 55′ 33″W (NAD 1983), approximately 200 yards northeast of the Triboro Bridge.

(b) *Effective period.* This section is effective from 8:45 p.m. until 10:15 p.m. on Wednesday, July 1, 1998.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 16, 1998.

**L.M. Brooks,**

*Captain, U.S. Coast Guard, Captain of the Port, New York Acting.*

[FR Doc. 98–17369 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–M

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[OH103–2; FRL–6116–9]**

## Approval and Promulgation of Implementation Plans; Ohio

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to a final rule published on March 30, 1998, which approved sulfur dioxide emission limits for the Sun Oil Company located in Lucas County, Ohio.

**EFFECTIVE DATE:** June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Randolph O. Cano, at (312) 886–6036.

**SUPPLEMENTARY INFORMATION:** On March 30, 1998 (63 FR 15091), EPA approved the Ohio Environmental Protection Agency's December 9, 1996 request to incorporate site specific sulfur dioxide emission limits for the Sun Oil facility located in Lucas County, Ohio into the Ohio State Implementation Plan. Two errors were made in codifying EPA's approval. Specifically, EPA intended to delete the existing references to this Sun Oil facility at 40 CFR 52.1881(a)(4) and (8). Unfortunately the references to this Sun Oil facility were not removed from §§ 52.1881 (a)(4) and (8) when these paragraphs were published beginning at the bottom of the third column on page 15093 and finishing in the second column on page 15094. An additional error identified in paragraph (a)(4) is that Bergstrom Paper is erroneously listed twice as an exception to EPA's approval of the sulfur dioxide emission limits for Montgomery County. This technical correction removes the Sun Oil references at 40 CFR 52.1881(a)(4) and (8) and the duplicate Bergstrom Paper entry at paragraph(a)(4).

**Need for Correction**

The failure to remove references to Sun Oil Company's Lucas County facility from §§ 52.1881(a)(4) and (8) incorrectly indicates that this facility is not subject to the requirements contained in these paragraphs. The deletion of the duplicate Bergstrom Paper entry will clarify the Montgomery County codification. EPA is publishing this action to correct these errors.

**Administrative Procedure Act**

This action will be effective immediately upon publication in the **Federal Register** pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1) and (3)(APA) for good cause. This action which merely corrects codification errors made in EPA's approval of a sulfur dioxide emission limit for Sun Oil's Lucas County facility and a similar typographical error is too minor to be of interest to the general public. Holding a public comment period on this action is unnecessary. The thirty day delay of the effective date of this action generally required by the APA is unwarranted in that it does not serve the public interest to unnecessarily delay the effective date of this action.

*A. Executive Order 12866*

Under Executive Order 12866, this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The EPA thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act.

*B. Children's Health Protection*

This rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1966, generally provides that before a rule may take affect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 30, 1998. The EPA will submit 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 United States prior to publication of this rule in the **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, Intergovernmental relations, Sulfur dioxide.

Dated: June 18, 1998.

**Gail C. Ginsberg,**

*Acting Regional Administrator.*

For the reasons stated in the preamble, § 52.1881 of part 52, chapter I, title 40 of the Code of Federal Regulations published at 63 FR15091 March 30, 1998, is corrected as follows:

## PART 52—[AMENDED]

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

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

## Subpart KK—Ohio

2. Section 52.1881 is amended by correcting paragraphs (a)(4) and (a)(8) to read as follows:

**§ 52.1881 Control strategy: Sulfur dioxide.**

(a) * * *

(4) Approval—EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light—Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric—Beckjord), Clinton County, Columbiana County, Coshocton County (except Columbus & Southern Ohio Electric—Conesville), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, (except Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Ohio Rubber, Cleveland Electric Illuminating Company—Eastlake, and Painesville Municipal Boiler #5), Lawrence County (except Allied Chemical—South Point), Licking County, Logan County, Lorain County (except Ohio Edison—Edgewater, Cleveland Electric Illuminating Company—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (except Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper and Miami Paper), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical Company), Wayne County, Williams County, Wood County (except Libbey—Owens—Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties or sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric—Beckjord), Coshocton County (Columbus & Southern Ohio Electric—Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), Lake County (Ohio Rubber, Cleveland Electric Illuminating Company—Eastlake, and Painesville Municipal—Boiler #5), Lawrence County (Allied Chemical—South Point), Lorain County (Ohio Edison—Edgewater Plant, Cleveland Electric Illuminating Company—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey—Owens—Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

[FR Doc. 98–17115 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[LA45–1–7383, FRL–6116–8]**

## Approval and Promulgation of Air Quality State Implementation Plans, Louisiana; Correction

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

**ACTION:** Correction.

**SUMMARY:** This document corrects 40 CFR part 52, subpart T—Louisiana, § 52.970 Identification of Plan, by removing an inadvertent duplication of paragraph (c)(55).

**EFFECTIVE DATE:** June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7354 or via e-mail at scoggins.paul@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the current 40 CFR part 52, an error exists in having two § 52.970 (c)(55) paragraphs. This action corrects this duplication.

### Administrative Procedure Act

Under Executive Order 12866, this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual cost of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act. The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides and Volatile organic compounds.

Dated: June 17, 1998.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

For the reasons stated in the preamble, 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 *et seq.*

**§ 52.970 [Corrected]**

2. Section 52.970 is corrected by removing the first paragraph (c)(55).

[FR Doc. 98–17376 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Chapters 300 and 301

**RIN 3090–AG25**

### Federal Travel Regulation; General Guides and Temporary Duty (TDY) Travel Allowances

**AGENCY:** Office of Government wide Policy, GSA.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to a final rule on Federal Travel Regulations appearing in the **Federal Register** of Wednesday, April 1, 1998 (63 FR 15950). The rule added a new Chapter 300, and revised Chapter 301, except Appendixes A and B.

**EFFECTIVE DATE:** July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jane Groat, (202) 501–4318.

**SUPPLEMENTARY INFORMATION:** In rule document 98–7725 beginning on page 15950 in the issue of Wednesday, April 1, 1998, make the following corrections:

CHAPTER 300—GENERAL

* * * * *

## PART 300–2—HOW TO USE THE FTR

1. On page 15951, under the table of contents in column two, following the Table of Contents for part 300–2, subpart C, add an authority citation to read as follows:

**Authority:** 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.''

2. On page 15951, in lines four and seven from the bottom of column two, correct the words ''contractor-issued'' and ''Contractor-provided'' to read ''Government contractor-issued'' and ''government contractor-provided''.

3. On page 15952, correct lines one and two of column one to read ''*Employee with a disability* (also see Special needs)—''.

4. On page 15952, in the second column, in the 11th line from the top, correct the word ''Territory'' to read ''Territories''.

5. On page 15953, in the 26th line from bottom of Column one, correct the word ''cannot'' to read ''can''.

6. One page 15954, in column two, instruction number 2 is corrected by adding after the words ''41 CFR chapter 301 is amended by ''the words'' revising the chapter heading; creating subchapter designations A, B, C, and D;''.

7. One page 15955, the first two lines in column three are revised to read ''PART 301–10—TRANSPORTATION EXPENSES''.

8. On page 15955, in the 19th line from the bottom of column three, correct ''(GTR(s),'' to read ''(GTR(s))''.

9. On page 15956, in the 17th line from the top of column two, correct ''POV'' to read ''privately owned automobile''.

10. On page 15956, in the 26th line from the bottom of column two, correct ''301–10–450'' to read ''301–10.450''.

11. On page 15957, in the 15th line from the top of column one, correct paragraph (b) to read ''(b) Using coach class service, unless premium class or first-class service is authorized;''.

12. On Page 15957, in the ninth line from the top of column three, correct ''10.115'' to read ''10.117''.

13. On page 15959, in lines 13 and 14 from the top of column one, remove the words ''of this section''.

14. On page 15959, in line 24 from the top of column one, correct ''U.S.'' to read ''U.S.''.

15. On page 15959, in the 23rd and 24th lines from the bottom of column two, remove the words ''of this part''.

16.–17. On page 15959, in lines 17 and 18 from the bottom of column three, correct the cite ''101–.37.403'' to read ''101–37.403'' and the words ''and or'' to read ''and/or''.

18. On page 15960, the word ''allowance'' in the § 301–10.304 title is corrected to read ''allowances''.

19. On page 15961, in column one, remove the comma in the 26th line from the top, and in the 27th line from the top, add a comma after the word ''following''.

20. On page 15961, in the 28th line from the top of column two, remove the words ''designated post of duty'' and add the words ''official station'' in its place.

21. On page 15961, in the 24th line from the bottom of column two, amend ''§ 301.10.450'' to read ''§ 301–10.450''.

22. One page 15962, in the 7th line from the bottom of column one, revise the words ''Where you obtain lodging'' to read ''Your TDY location''.

23. On page 15963, in the 31st line from the top in the third column, correct the word ''Reference'' to read ''reference''.

24. On page 15965, in the 26th and 27th lines from the top in the third column, remove the words ''But not that'' and correct the word ''when'' to ''When''.

25. On page 15965, in the 4th line from the bottom, in column two of the table, amend ''Government charge card'' to read ''Government contractor-issued charge card''.

26. One page 15966, in the 31st line from the top of column one, amend ''301.13–3'' to read ''301–13–3''.

27. On page 15967, in the 21st line from the bottom of column one, remove the symbol ''§ '' and replace it with the word ''part''.

28. On page 15967, unbold the print in the 17th and 18th lines from the top of column two.

29. On page 15968, remove the word ''C(c)ontractor-issued'' and replace it with the words ''Government contractor-issued'' where it appears in the sixth line from the bottom of column one, the eighth, 13th, and 26th lines from the top of column two, the 22nd line from the top of column three, the second, fifth, and eighth lines from the top of the second column of the table, and the second line from the top of the third column of the table, respectively.

30. On page 15968, in the seventh line from the bottom of column two, remove the word ''shall'' and replace it with the word ''will''.

31. On page 15968, in the fourth line from the top of column three, remove the words ''of your travel card'' and replace them with the words ''of your Government contractor-issued travel card''.

32. On page 15968, in the subpart B heading, amend the word ''common'' to read ''Common''.

33. On page 15968, in the third line from the top of column three of the table, remove the hyphen from the word ''circumstances''.

34. On page 15968, in the fifth line from the bottom of column three, correct the words ''the GTR'' to read ''the recovered GTR''.

35. On page 15969, in the first table, remove the words ''(C) charge card'' and ''contractor-issued'' and replace them with the words ''Government contractor-issued charge card'' where they appear in the third line from the bottom of column one, and the fourth and fifth lines from the top of column two, respectively.

36–37. On page 15969, in the second line from the bottom of column two in the first table and the second line from the bottom of column one in the second table, remove the hyphen from the words ''particularly'' and ''transaction'', respectively.

38. On page 15970, in the 12th line from the bottom of column one, remove the word ''for'' and replace it with the word ''from''.

39. On page 15970, in the 18th line from the top of column three, remove the words ''You must submit the ticket coupons'' and replace them with the words ''You must submit any unused tickets, coupons, or other evidence of refund''.

40. On page 15971, in the 12th line from the bottom of column three, remove the word ''Should'' and replace it with the word ''May''.

41. On page 15973, in the 16th line from the bottom of column one, remove the word ''A'' and replace it with the word ''An''.

42. On page 15974, in the 26th line from the top of column two, remove the word ''signature'' and replace it with the word ''signatures''.

43. On page 15975, in the seventh line from the bottom of column one, remove the word ''authorization'' and replace it with the word ''authorizations''.

44. On page 15976, in the 26th line from the top of column two, add a period following the word ''advances''.

45. On page 15976, in the 27th line from the bottom of column three, remove the acronym ''POV'' and replace it with ''POVs''.

46. On page 15977, in the sixth line from the bottom of column one, remove the word ''section'' and replace it with the symbol ''§''.

47. On page 15977, in the 15th line from the bottom of column one, and the 18th and 31st lines from the top of column three, remove the words ''contractor issued'' and ''contractor-issued'' and replace them with words ''Government contractor-issued'', respectively.

48. On page 15978, in the 24th line from the bottom of column one, remove the ''0''.

49. On page 15978, in the 23rd line from the top of column two, remove the word ''and''.

50. On page 15978, in the 25th line from the top of column two and the eighth line from the bottom of column three, remove the word ''contractor-issued'' and replace it with the words ''Government contractor-issued'', respectively.

51. On page 15978, in the 15th line from the top of column three, remove the ''period'' and replace it with a semi-colon.

52. On page 15979, in the tenth line from the top of column one, remove the word ''contractor-issued'' and replace it with the words ''Government contractor-issued''.

53. On page 15979, in the 14th line from the bottom of column two, remove the words ''of this subpart''.

54. On page 15979, in the ninth line from the bottom of column two and the 19th line from the top of column three, remove the words ''non Federal'' and ''non-federal'' and replace them with the word ''non-Federal''.

55. On page 15980, in the 25th line from the bottom of column one, remove the word ''pre -employment'' and replace it with the word''pre-employment''.

56. On page 15980, in the tenth line from the top of column two, remove the words ''contract issued'' and replace them with the word ''contractor-issued''.

57. On page 15980, in the 11th line from the bottom of column two, and lines six through eight from the top of column three, remove the words ''he or she'' and ''himself or herself'' and replace them with the words ''he/she'' and ''himself/herself'', respectively.

58. On page 15980, in the 16th line from the bottom of column three, remove the numeral ''1''.

59. On page 15981, in the 23rd line from the top of column one, remove the words ''contract issued'' and replace them with the word ''contractor-issued''.

60. On page 15981, in Appendix C to chapter 301 remove the word ''City'', in column one and insert it after the phrase ''State, Zip'' on the same line.

61. On page 15981, in the first table, second column, correct the phrase ''his or her'' to read ''his/her'' and in the second table, second column, correct the phrase ''he or she'' to read, ''he/she'' both times it appears.

62. On page 15981, in the tenth line from the bottom of column three of Appendix C, remove the words ''within noncontiguous'' and replace them with the words ''outside the continental''.

63. On page 15981, in the 11th line from the bottom of column three of Appendix C, remove the word ''Continental'' and replace it with the word ''continental''.

64. On page 15982, in the third column of the second table, remove the acronym ''POC'' and replace it with ''POV''.

65. On page 15983, in the seventh line from the top, remove the word ''Note'' and replace it with the words ''Note to Appendix C''.

66. On page 15983, insert a new 11th line from the bottom of column one to read ''EFT: Electronic Funds Transfer''.

67. On page 15983, insert a new 17th and 18th line from the bottom of column two to read ''ID: Identification'' and ''IDL: International Date Line'', respectively.

68. On page 15983, insert a new 14th line from the bottom of column two to read ''JTR: Joint Travel Regulation''.

69. On page 15983, insert a new 16th line from the bottom of column three to read ''SSN: Social Security Number''.

70. On page 15983, in line 12 from the bottom of column three, remove the word ''System'' and replace it with ''Services/System''.

Dated: June 23, 1998.

**Peggy Wood,**

*Deputy Director, Travel and Transportation, Management Policy Division.*

[FR Doc. 98–17107 Filed 6–29–98; 8:45am]

BILLING CODE 6820–34–M

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 61

**[DA 98–914]**

## Electronic Tariff Filing System

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopted a Report and Order which requires that incumbent local exchange carriers (LECs) use the Common Carrier Bureau's (Bureau) Electronic Tariff Filing System (ETFS) to officially file tariffs and associated documents. The Order amends the Commission's tariff filing rules to accommodate mandatory electronic filing. This Order applies the mandatory electronic filing requirement to incumbent LECs only. However, ETFS also enables interested parties to access and download these documents over the Internet, and to file petitions to reject, or suspend and investigate tariff filings electronically.

**EFFECTIVE DATE:** July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Todd R. Mitchell or Geneva S. Butler, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order adopted on May 28, 1998, and released on May 28, 1998. The full text of the Order is available for inspection and copying during normal business hours in the Commission's Public Reference Room, Room 239, 1919 M Street N.W., Washington, DC. The complete text of this decision may be purchased from the Commission's duplication contractor, International Transcription Services Inc. (ITS), (202) 857 3800, 1231 20th Street, N.W., Washington, DC 20036.

1. The amended rules also provide that the official filing date is the date on which the document is received by ETFS. The date of receipt shall be determined by the time of the end of the electronic transmission with 5:30 pm Eastern Time as the cut-off time for filings. Thus, if the transmission of a filing ends after 5:30 pm Eastern Time on a business day, the official filing date will be the next business day. If the time of termination of the filing is on a day that is not a business day, such as, a weekend or holiday, the official filing date will be the next business day. ETFS automatically establishes the date of filing in accordance with these requirements. Parties filing electronically must request and receive a receipt at the end of each filing session in order to complete the transmission. The receipt, which will be received at the filer's computer, will provide details of the filing session, including the official receipt date and time, and will serve as the filing party's official documentation that the filing was received by the Commission. The Commission requires that all incumbent LECs file all of their tariff base documents electronically within the first five business days of July, 1998. Nonmajor rules, such as implementation of electronic tariff filing, and rules implementing the Telecommunications Act of 1996 can go into effect as determined by the agency as long as Contract With America Advancement Act (CWAAA) and required abstracts have been filed with Congress. ETFS has met these requirements, therefore the waiting period for **Federal Register** printing is not required.

2. Access to ETFS is via the Common Carrier Bureau's web page: <http://www.fcc.gov/ccb>, for the incumbent LECs and other interested parties. Access to the web page is through an Internet Service Provider (ISP) with software that includes a browser program, preferably Netscape 3.0 or later versions. To view documents in ETFS effectively, a user must have Adobe Acrobat plug-in for browser software. An ETFS user's manual is available for viewing or downloading, as well as, in paper form from the Commission's commercial copy contractor, ITS. A computer terminal is available in the Commission's Public Reference Room, Room 239, 1919 M Street NW, Washington, DC, for accessing ETFS. The Commission has established an e-mail address (etfs@fcc.gov) and an information line (202) 418–7700, for questions and comments. Bureau, 202–418–1520.

### Paperwork Reduction Act:

The Federal Communications Commission received Office of Management and Budget approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

*OMB Control No.:* 3060–0745.

*Expiration Date:* 12/31/2000.

*Title:* Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996—CC Docket No. 96–187.

*Form No.:* N/A.

*Respondents:* Business or other for-profit entities.

*Estimated Annual Burden:* 1400 respondents; .33 hours per response (avg.); 462 total annual burden hours (estimates for electronic filing only).

*Estimated Annual Reporting and RecordKeeping Cost Burden:* $170,000.

*Frequency of Response:* On occasion.

Description: In the Tariff Streamlining Report and Order, the Commission adopted regulations implementing the tariff streamlining provisions of the Telecommunications Act of 1996. The Commission determined, *inter alia,* that it would establish a program of mandatory electronic filing of tariffs and associated documents by incumbent local exchange carriers (LECs). The Commission delegated authority to the Chief, Common Carrier Bureau (Bureau), to establish this program. This Order amends rules to accommodate the Commission's Electronic Tariff Filing System (ETFS). Incumbent LECs must use the Bureau's ETFS to officially file tariffs and associated documents beginning July 1, 1998. Other parties may also file documents using ETFS, such as petitions to reject, or suspend and investigate tariff filings beginning July 1, 1998. Obligation to respond: Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

### Ordering Clause

Accordingly, *It Is Ordered,* pursuant to sections 1, 4(i), 10, 201–205, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201–205, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, and paragraph 48 of the Tariff Streamlining Order, 12 FCC Rcd 2170, page 2195 (1997), part 61 of the Commission's rules is amended as set forth in the rule changes.

*It Is Further Ordered* that these rules shall become effective July 1, 1998.

## List of Subjects in 47 CFR Part 61

Tariffs.

Federal Communications Commission.

**Patrick J. Donovan,**

*Deputy Chief, Competitive Pricing Division, Common Carrier Bureau.*

## Rule Changes

For the reasons discussed in the preamble part 61 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for part 61 continues to read as follows:

**Authority:** Section 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

2. Add new §§ 61.13 through 61.17 and a new undesignated center heading after the heading ''GENERAL RULES'' to read as follows:

**Rules for Electronic Filing**

Sec. 61.13 Scope.
Sec. 61.14 Method of filing publications.
Sec. 61.15 Letters of transmittal and cover letters.
Sec. 61.16 Base documents.
Sec. 61.17 Method of filing applications for special permission.

## Rules for Electronic Filing

### § 61.13 Scope.

(a) This applies to all tariff publications of carriers required to file tariff publications electronically, and any tariff publication that a carrier chooses to file electronically.

(b) All incumbent local exchange carriers are required to file tariff publications electronically.

(c) All tariff publications shall be filed in a manner that is compatible and consistent with the technical requirements of the Electronic Tariff Filing System.

### § 61.14 Method of filing publications.

(a) Publications filed electronically must be addressed to ''Secretary, Federal Communications Commission, Washington, DC 20554.'' The Electronic Tariff Filing System will accept filings 24 hours a day, seven days a week. The official filing date of a publication received by the Electronic Tariff Filing System will be determined by the date and time the transmission ends. If the transmission ends after the close of a business day, as that term is defined in § 1.4(e)(2) of this Chapter, the filing will be date and time stamped as of the opening of the next business day.

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the transmittal letter, (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariff fees electronically should submit a copy of the Form 159 and the original transmittal letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked ''reserved''. Issuing carriers should submit these fee materials on the same day as the transmission in paragraph (a) of this section.

(c) Carriers that are required to file publications electronically may not file those publications on paper or other media unless specifically required to do so by the Commission.

(d) Carriers that are required to file publications electronically need only transmit one set of files to the Commission. No other copies to any other party are required.

(e) Carriers that are required to file publications electronically must continue to comply with the format requirements set forth in part 61.

### § 61.15 Letters of transmittal and cover letters.

(a) All tariff publications filed with the Commission electronically must be accompanied by a letter of transmittal. All letters of transmittal must:

(1) Concisely explain the nature and purpose of the filing;

(2) Specify whether supporting information is required for the new tariff or tariff revision, and specify the Commission rule or rules governing the supporting information requirements for that filing;

(3) Contain a statement indicating the date and method of filing of the original of the transmittal as required by § 61.14(b).

(b) Carriers filing tariffs electronically pursuant to the notice requirements of section 204(a)(3) of the Communications Act shall display prominently, in the upper right hand corner of the letter of transmittal, a statement that the filing is made pursuant to that section and whether the tariff is filed on 7 or 15 days notice.

(c) Any carrier filing a new or revised tariff made on 15 days' notice or less shall include in the letter of transmittal the name, room number, street address, telephone number, and facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions against the filing as required under § 1.773(a)(4) of this chapter.

(d) The letter of transmittal must specifically reference by number any special permission necessary to implement the tariff publication. Special permission must be granted prior to the filing of the tariff publication and may not be requested in the transmittal letter.

(e) The letter of transmittal must be substantially in the format established in §§ 61.33(g) and 61.33(h)(1).

(f) All submissions of documents other than a new tariff or revisions to an existing tariff, such as Base Documents or Tariff Review Plans, must be accompanied by a cover letter that concisely explains the nature and purpose of the filing. Publications submitted under this paragraph are not required to submit a tariffing fee.

### § 61.16 Base documents.

(a) The Base Document is a complete tariff which incorporates all effective revisions, as of the last day of the preceding month. The Base Document should be submitted with a cover letter as specified in § 61.15(f) of this part and identified as the *Monthly Updated Base Document.*

(b) Initially, carriers that currently have tariffs on file with the commission must file a Base Document within five days of the initiation of mandatory electronic filing.

(c) Subsequently, if there have been revisions that became effective up to and including the last day of the preceding month, a new Base Document must be submitted within the first five business days of the current month that will incorporate those revisions.

### § 61.17 Method of filing applications for special permission.

(a) An application for special permission filed electronically must be addressed to ''Secretary, Federal Communications Commission, Washington, DC 20554.'' The Electronic Tariff Filing System will accept filings 24 hours a day, seven days a week. The official filing date of a publication received by the Electronic Tariff Filing System will be determined by the date and time the transmission ends. If the transmission ends after the close of a business day, as that term is defined in § 1.4(e)(2) of this chapter, the filing will be date and time stamped as of the opening of the next business day.

(b) In addition, except for issuing carriers filing tariffing fees electronically, for special permission applications requiring fees as set forth in part 1, subpart G of this chapter,

issuing carriers must submit the original of the application letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit a copy of the Form 159 and the original application letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked ''reserved''. Issuing carriers should submit these fee materials on the same day as the transmission in paragraph (a) of this section.

(c) In addition, the requirements of § 61.153(c) are applicable, except the additional copy addressed to the Chief, Tariff and Pricing Analysis Branch is not required.

3. Section 61.52 is amended by revising paragraph (c) to read as follows:

**§ 61.52 Form, size, type, legibility, etc.**

* * * * *

(c) Incumbent local exchange carriers shall file all tariff publications and associated documents, such as transmittal letters, requests for special permission, and supporting information, electronically in accordance with the requirements set forth in § 61.13 through § 61.17.

[FR Doc. 98–17410 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[Docket No. 980225048–8059–02; I.D. 062398A]**

## Pacific Halibut Fisheries; Washington Sport Fishery

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

**ACTION:** Inseason action.

**SUMMARY:** NMFS announces changes to the regulations for the Area 2A sport fishery off the south coast of Washington. A subsection of the south coast of Washington area, from the Queets River south to 47°00'00'' N. lat., and east of 124°40'00'' W. long. will be open 7 days per week, beginning June 26, 1998, until 36,648 lb (16.6 mt) are estimated to have been taken, after which time all sport fishing for halibut in the south coast of Washington area between the Queets River and Leadbetter Point will be closed. The purpose of this action is to allow halibut taken as bycatch in shallow-depth sport fishing trips to be retained, rather than discarded.

**DATES:** Effective June 25, 1998.

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

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier, 206-526-6120.

**SUPPLEMENTARY INFORMATION:** The Area 2A Catch Sharing Plan for Pacific halibut off Washington, Oregon, and California is implemented in the annual management measures for the Pacific halibut fisheries published on March 17, 1998 (63 FR 13000). In accordance with those regulations, the sport fishery in the area from Queets River, Washington, to Leadbetter Point, Washington opened on May 1 and has continued for 5 days per week (Sunday through Thursday) since that opening. The 1998 subarea quota for this fishery is 36,648 lb (16.1 mt). This all-depth sport fishery in this area is scheduled to close when 1,000 lb (0.45 mt) are projected to remain in the subarea quota. Immediately following that closure, the season would reopen in the shallow-depth area from the Queets River (47°31'42'' N. lat.) south to 47°00'00'' N. lat. and east of 124°40'00'' W. long., and continue every day until the full 36,648 lb (16.1 mt) subarea quota is estimated to have been taken.

The best available data on June 16, 1998, indicates that as of June 14, 1998, 31,327 lb (14.2 mt) of halibut have been taken in the area from the Queets River south to Leadbetter Point, Washington. Catch rate attainment for this subarea is significantly slower than it has been in past years, lengthening the directed sport season over past season durations. While a longer than usual halibut season has been beneficial to area sport fishery operations, the lengthened 5 day per week fishery has had an unanticipated impact on sport fishing trips directed at species other than halibut. Because the halibut fishery is restricted to 5 days per week, halibut must be discarded when caught incidentally on fishing trips directed at other species on days when halibut may not be landed (Friday and Saturday). A small number of halibut are taken from the shallow depth area, where a significant rockfish sport fishery occurs. Allowing halibut landings for 7 days per week from this area will eliminate unnecessary discard of incidentally-caught halibut. Any halibut landed from the shallow-depth fishery on a Friday or a Saturday will count against the all-depth fishing quota of 35,648 lb (16.1 mt). NMFS has determined, in consultation with Washington Department of Fish and Wildlife (WDFW), that the directed halibut fishery for this area has been proceeding at a sufficiently slow rate to justify allowing Friday and Saturday halibut landings from the shallow depth fishing trips that are generally directed at species other than halibut, but which may catch halibut incidentally.

Section 24 of the 1998 Pacific halibut regulations provides NMFS with the flexibility to make certain inseason management changes including, among other things, modification of sport fishing periods, and modification of sport fishery days per calendar week. In consultation with WDFW, the Pacific Fishery Management Council, and the International Pacific Halibut Commission (IPHC), NMFS has determined that the remaining quota for this area is sufficient to open the shallow depth fishery for 7 days per week, beginning June 26, 1998. The all-depth fishery will continue as originally specified in the annual management measures, until 35,648 lb (16.6 mt) are estimated to have been taken from the south coast of Washington area. Once 35,648 lb (16.1 mt) are estimated to have been taken, the shallow depth subarea within the south coast of Washington area (from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long.) will remain open every day until 36,648 lb (16.6 mt) are estimated to have been taken, or until September 30, whichever occurs first.

### NMFS Action

For the reasons stated above, NMFS announces the following change to the 1998 annual management measures (63 FR 13000, March 17, 1998, as amended). For the Washington south coast subarea, section 23(4)(C)(iii)(A) is amended as follows:

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38'10'' N. lat.), the quota for landings into ports in this area is 36,648 lb (16.6 mt).

(A) The fishing season that began on May 3 continues 5 days a week (Sunday through Thursday) until 35,648 lb (16.1) are estimated to have been taken and the season is closed by the Commission. Within the area described in this section, above, the area from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long. is open 7 days per week, and continues every day until

36,648 lb (16.6 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

**Classification**

These actions are authorized by the regulations implementing the Area 2A Catch Sharing Plan. The determination to take these actions is based on the most recent data available. Because of the need for immediate action to implement these changes to limit unnecessary halibut discard, and because the public had an opportunity to comment on NMFS' authority to make inseason changes to certain management measures when those measures would further the objectives of the Catch Sharing Plan, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. Public comments will be received for a period of 15 days after the effectiveness of this action. This action is authorized by Section 24 of the annual management measures for Pacific halibut fisheries published on March 17, 1998 (63 FR 13000, 13008) and has been determined to be not significant for purposes of E.O. 12866.

Dated: June 24, 1998.

**Bruce C. Morehead,**

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

[FR Doc. 98–17342 Filed 6–25–98; 1:42pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 63, No. 125
Tuesday, June 30, 1998

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.

## OFFICER OF PERSONNEL MANAGEMENT

### 5 CFR Part 550

**RIN 3206–A129**

### Hazardous Duty Pay

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Officer of Personnel Management is issuing a proposed regulation to provide an 8 percent hazard pay differential for General Schedule employees who perform work at a worksite a more than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.

**DATES:** Comments must be received on or before July 30, 1998.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1300 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email at payleave@opm.gov.

**FOR FURTHER INFORMATION CONTACT:** Kevin Kitchelt, (202) 606–2858, FAX: (202) 606–0824, or email at payleave@opm.gov.

**SUPPLEMENTARY INFORMATION:** The Smithsonian Institution asked the Office of Personnel Management (OPM) to establish a 10 percent hazard pay differential for General Schedule employees for days when they must perform work at the Smithsonian Astrophysical Observatory (SAO) near the 4206 meter (13,800 foot) summit of Mauna Kea, an extinct volcano on the Island of Hawaii. The Smithsonian Institution states that suitable housing is available only near sea level and that SAO employees must commute back and forth from their homes to the SAO worksite each workday. The Smithsonian Institution submitted research evidence which indicates that work at high altitudes can have negative physiological effects such as impaired judgment, increased heart rates, and nausea, especially if employees have not had time to acclimate to the lower atmospheric pressure and oxygen levels that exist at a high altitude.

After discussions with the Smithsonian Institution, OPM has agreed to propose an 8 percent hazard duty pay differential for work at such a high altitude. The reason for proposing a lower differential rate is to conform with a proposed 8 percent environmental differential rate for prevailing rate (wage) employees who work at the same or similar high altitude job sites. The proposal for an 8 percent environmental differential will be provided to the Federal Prevailing Rate Advisory Committee for its consideration.

As stated in 5 U.S.C. 5545(d), OPM is responsible for establishing schedules of hazardous duty pay differentials for General Schedule employees. This proposed regulation would authorize a new hazard pay category for General Schedule employees who must work at worksite more than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. The establishment of this new category for payment of hazardous duty pay would not relieve an agency of its responsibility to take whatever measures are feasible to minimize the harmful effects of work at a high altitude.

### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

### Regulatory Flexibility Act

I certify that these regulations would not have a significant impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

### List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM is proposing to amend subpart I of part 550 of title 5 of the Code of Federal Regulations as follows:

## PART 550—PAY ADMINISTRATION (GENERAL)

### Subpart I—Pay for Duty Involving Physical Hardship or Hazard

1. The authority for subpart I of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5545(d), 5548(b).

2. Appendix A to subpart I of part 550 is amended by adding a new category to the Schedule of Hazard Pay Differentials to read as follows:

### Appendix A—Schedule of Pay Differentials Authorized for Hazardous Duty Under Subpart I

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| * * * * * | * | * |
| Exposure to Physiological Hazards: | | |

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)—Continued

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| * * * * * | * | * |
| (6) *Working at high altitudes.* Performing work at a worksite more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. | 8 | [Date of effectiveness of the final rule]. |
| * * * * * | * | * |

[FR Doc. 98–17318 Filed 6–29–98; 8:45 am]

**BILLING CODE 6325–01–M**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 52

**[FV–98–327]**

### Processed Fruits and Vegetables

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the regulations governing inspection and certification for processed fruits, vegetables, and processed products made from them by increasing by approximately three to seven percent fees charged for the inspection services. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937 would also be affected. This rule would also incorporate miscellaneous changes to revise a citation number and revise a statement in a footnote in regards to sample size.

**DATES:** Comments must be postmarked or courier dated on or before July 30, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. James R. Rodeheaver at the above address or call (202) 720–4693.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget. Also, pursuant to the 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, the required analyses are set forth below.

AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover lot, and year round and less than year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with costs projected at $13.1 million and an end-of-year reserve balance of $3.9 million. The PPB trust fund reserve balance for these programs will be approximately $0.5 million under the four-month level of approximately $4.4 million, which is called for by Agency policy. Further, PPB's cost of operating the user fee financed programs are expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000. These cost increases will result from inflationary increases with regard to current PPB operations and services.

The Processed Products Branch (PPB) estimates that without a fee increase the trust fund reserve as called for by Agency policy (four-months) will significantly decrease, that will result in an operating reserve balance of approximately $3.0 million in FY 1999 and $2.6 million in FY 2000. This relates to only 2.9 months and 2.3 months of operating reserve for the respective years.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases have increased PPB's cost of operating these programs by $400,000 per year.

The proposed fee increase of approximately 3 to 7 percent, should result in an estimated $500,000 in additional revenue per year and should enable PPB to cover its costs and re-establish program reserves (current operating reserves are being maintained at a level below that provided for by Agency policy).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The objective of the proposed rule is to increase user fee revenue generated under the lot inspection program, and the year round and less than year round inspection programs by approximately $500,000 annually. This action is authorized under the AMA of 1946 [see 7 U.S.C. 1622(h)] which states that the Secretary of Agriculture may assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *''.

There are more than 1239 users of PPB's lot, and less than year round and year round inspection services (including applicants who must meet

import requirements,[1] inspections which amount to under 2 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. PPB has not identified any other federal rules which may duplicate, overlap or conflict with this proposed rule.

Currently, there are 4 processed commodities subject to 8e import regulations: canned ripe olives, dates, prunes, and processed raisins. A current listing of the regulated commodities can be found under 7 CFR parts 944 and 999.

Inasmuch as the inspection services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small (three to seven percent) and should not significantly affect these entities. Finally, except for those applicants who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and therefore, any decision to discontinue the use of the services should not prevent them from marketing their products.

**Executive Order 12988**

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

**Proposed Action**

The AMA authorizes official inspection, grading and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule will amend the schedule for fees for inspection services rendered to the processed fruit and vegetable industry to reflect the costs necessary to operate the program and incorporates miscellaneous changes to revise a citation number and to revise a statement in a footnote in regards to sample size.

AMS regularly reviews its user fee programs to determine if the fees are adequate. While PPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, and less than year round and year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). The current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with cost projected at $13.1 million and an end-of-year reserve of $3.9 million. This will result in a decrease of PPB's trust fund balance of approximately $0.5 million under the four-month level ($4.4 million) called for by Agency policy. Further, PPB's cost of operating these inspection programs is expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000, resulting in a decrease of the trust fund balance to approximately $3.0 in FY 1999, and to approximately $2.6 million in FY 2000. These cost increases will result from inflationary increases with regard to current PPB operations and services.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases will increase PPB's costs of operating these inspection programs by approximately $400,000 per year. Therefore, the salary increases necessitate additional funding under the program. This proposed fee increase of approximately 3 to 7 percent should result in an estimated additional revenue of $500,000 per year, and should enable PPB to cover the costs of doing business and re-establish program reserves (current operating reserves are at a level below that provided for by Agency policy). In order to reach and maintain a four-month reserve, a further increase in fees may be likely in future years.

Based on the aforementioned analysis of increasing program costs, AMS proposes to increase the fees relating to lot inspection service and the fees for less than year round and year round inspection services. For inspection services charged under § 52.42, overtime and holiday work would continue to be charged as provided in that section. For inspection services charged on a contract basis under § 52.51 overtime work would also continue to be charged as provided in that section. The following fee schedule compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR 52.42–52.51. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current $41.00/hr.
Proposed $43.00/hr.

Charges for travel and other expenses as found in § 52.50 are:

Current: $41.00/hr.
Proposed: $43.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51(c) are:

(1) For inspector assigned on a year-round basis:

Current: $34.00/hr.
Proposed: $35.00/hr.

(2) For inspector assigned on less than a year-round basis: Each inspector:

Current: $42.00/hr.
Proposed: $45.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.51(d) are:

(1) Each inspector:

Current: $42.00/hr.
Proposed: $45.00/hr.

Also, AMS revises §§ 52.21 and 52.38 (Table II, footnote number 2), of 7 CFR part 52 to make editorial changes.

In § 52.21, § 52.50 is referenced as providing information regarding the purchase of additional copies of certificates. This should be revised to read § 52.49.

In § 52.38, Table II, footnote number 2, the statement that describes the sample size for Group 3 containers that weigh over 10 pounds is omitted. Table II, footnote number 2 is revised to include the sample size for Group 3 containers that are over 10 pounds.

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

Food grades and standards, Food labeling, Frozen foods, Fruit juices,

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–604), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Fruits, Reporting and recordkeeping requirements, and Vegetables.

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

## PART 52—[AMENDED]

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

**Authority:** 7 U.S.C. 1621–1627.

### § 52.42 [Amended]

2. In § 52.42, the figure ''$41.00'' is revised to read ''$43.00''.

### § 52.50 [Amended]

3. In § 52.50, the figure ''$41.00'' is revised to read ''$43.00''.

### § 52.51 [Amended]

4. In § 52.51, paragraph (c)(1), the figure ''$34.00'' is revised to read ''$35.00'', in paragraph (c)(2), the figure ''$42.00'' is revised to read ''$45.00'', and in paragraph (d)(1), the figure ''$42.00'' is revised to read ''$45.00''.

### § 52.21 [Amended]

5. In § 52.21, the words ''§ 52.50'' is revised to read ''§ 52.49''.

### § 52.38 [Amended]

6. In § 52.38, Table II, footnote number 2 is revised to read as follows:

[2] When a standard sample size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1 and 2—1 container and its entire contents. Group 3 containers up to 10 pounds—1 container and its entire contents. Group 3 containers over 10 pounds—approximately three pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

Dated: June 24, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–17297 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AEA–12]**

## Proposed Amendment to Class E Airspace; Danville, VA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Danville, VA. The amendment of a Standard Instrument Approach Procedure (SIAP) based on an Instrument Landing System (ILS) at Danville Regional 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 July 30, 1998.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–12, FAA 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 Regional Counsel, AEA–7, FAA 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, FAA 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 FAA 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. 98–AEA–12.'' 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 Regional Counsel, AEA–7, FAA 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 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Danville, VA. The ILS RWY 2 SIAP has been amended for the Danville Regional 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, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

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

* * * * *

**AEA VA E5 Danville, VA [Revised]**

Danville Regional Airport, VA
(Lat. 36°34′27″ N., long. 79°20′07″ W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Danville Regional Airport.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–17359 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AEA–05]**

## Proposed Establishment of Class E Airspace; Tidioute, PA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class E Airspace at Tidioute, PA. A VHF Omni-Directional Radio Range (VOR) Distance Measuring Equipment (DME)—A Standard Instrument Approach Procedure (SIAP), a VOR/DME RNAV Runway (RWY) 28 SIAP, a VOR/DME RNAV RWY 10 SIAP, a Global Positioning System (GPS) RWY 29 SIAP, and a GPS RWY 10 SIAP have been developed for the Rigrtona Airport, Tidioute, PA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before July 30, 1998.

**ADDRESSES:** Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–05, FAA Eastern Region, Federal Buildings, #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal businesses hours in the Airspace Branch, AEA–520, FAA 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, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parts are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–05''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the 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 Regional Counsel, AEA–7, FAA 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 Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Tidioute, PA. A VOR/DME–A SIAP, a VOR/DME RNAV RWY 28, a VOR/DME RNAV RWY 10, a GPS RWY 28 SIAP, and a GPS RWY 10 SIAP have been developed for Rigrtona Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet 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 a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 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 the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be 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 Tidioute, PA [New]**

Rigrtona Airport, PA
(Lat. 41°40′57″N., long. 79°27′11″W).

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Rigrtona Airport excluding the portions that coincides with the Titusville, PA and Corry, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–17360 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AEA–06]**

## Proposed Establishment of Class E Airspace; Collegeville, PA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class E airspace at Collegeville, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the Rhone-Poulenc Rorer Collegeville Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before July 30, 1998.

**ADDRESSES:** Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–06, FAA 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 Regional Counsel, AEA–7, FAA 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, FAA 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, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 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, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–06''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the 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 Regional Counsel, AEA–7, FAA 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 NPRM's 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 part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Collegeville, PA. A GPS Point In Space Approach has been developed for the Rhone-Poulenc Rorer Collegeville Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet 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 a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 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.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be 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 Collegeville, PA [New]**

Rhone-Poulenc Rorer Collegeville Heliport, PA

Point In Space Coordinates
(Lat. 40°10′08″N., long. 75°28′35″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Rhone-Poulenc Rorer Collegeville Heliport excluding that portion that coincides with the Pottstown, PA, North Philadelphia, PA, and Philadelphia, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–17363 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AEA–-09]**

## Proposed Establishment of Class E Airspace; Gettysburg, PA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class E airspace at Gettysburg, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the Gettysburg Hospital Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before July 30, 1998.

**ADDRESSES:** Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–09, FAA 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 Regional Counsel, AEA–7, FAA 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, New York 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 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, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–09''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the 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 Regional Counsel, AEA–7, FAA 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 NPRM's 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 Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Gettysburg, PA. A GPS Point In Space Approach has been developed for the Gettysburg Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet 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 a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 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.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be 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 Gettysburg, PA [New]**

The Gettysburg Hospital Heliport, PA
Point In Space Coordinates
(Lat. 39°48′24″N., long. 77°14′48″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving The Gettysburg Hospital Heliport.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–17364 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AEA–11]**

## Proposed Establishment of Class E Airspace; Carlisle, PA

**AGENCY:** Federal Aviation Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class E Airspace at Carlisle, PA. The Carlisle Airport is served by a Non-Directional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 28 Standard Instrument Approach Procedure (SIAP) and a VHF Omni-Directional Radio Range (VOR) Distance Measuring Equipment (DME) or GPS–A SIAP. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before July 30, 1998.

**ADDRESSES:** Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–11, FAA 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 Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA 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, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposals. 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 Airspace Docket No. 98–AEA–11''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the 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 Regional Counsel, AEA–7, FAA 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 Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Carlisle, PA. An NDB or GPS RWY 28 SIAP and a VOR/DME or GPS–A SIAP has been published for Carlisle Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet 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 a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

## PART 71—[AMENDED]

1. The authority citation for 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 the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be 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 Carlisle, PA [New]**

Carlisle Airport, PA
(Lat. 40°11′16″ N., long. 77°10′28″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Carlisle Airport.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–17367 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 16 and 99

### Single Issue Focus Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** The Food and Drug Administration's Office of Consumer Affairs is announcing a Single Issue Focus Meeting. The meeting will provide an opportunity for consumers, patient advocates, health professionals, and industry to learn about and comment on the proposed rule published in the **Federal Register** of June 8, 1998, on section 401 of the Food and Drug Administration Modernization Act of 1997 and the dissemination of information on unapproved/new uses for marketed drugs, biologics, and devices.

**DATES:** The meeting will be held on Wednesday, July 8, 1998, from 1:30 p.m. to 4:30 p.m. Send information regarding registration by July 6, 1998.

**ADDRESSES:** The meeting will be held at the Wilbur J. Cohen Bldg., Snow Room, 330 Independence Ave., SW., Washington, DC. Metro Stop: Blue or Orange Line to Federal Center, SW.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Anderson, Office of Consumer Affairs (HFE–40), Food and Drug Administration, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–827–4417, FAX 301–443–9767, E-mail: SMTP[Manders1@bangate.fda.gov].

**SUPPLEMENTARY INFORMATION:** Send registration information (including name, title, organization, address, telephone, fax number, and any requests for oral presentations) to the contact person (address above) by July 6, 1998. Any requests for oral presentations should include a brief summary of the presentation and the approximate amount of time requested for the presentation. The agency requests that persons or groups having similar interests consolidate their presentations and present them through a single representative. Every effort will be made to accommodate all registrants and requests for oral presentations. However because space and time is limited, admittance is on a ''first come, first serve basis,'' and the agency may not be able to accommodate all requests for oral presentations.

If you need special accommodations due to a disability, please contact Michael D. Anderson (address above) by July 6, 1998.

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: June 23, 1998.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 98–17293 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 178

**[Notice No. 862]**

**RIN 1512–AB64**

### Implementation of Pub. L. 104–208,the Omnibus Consolidated Appropriations Act of 1997 (96R–034P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Proposed rulemaking cross-referenced to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of the **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, enacted September 30, 1996. These regulations implement the law by adding to the list of prohibited persons anyone convicted of a ''misdemeanor crime of domestic violence'' and by adding the provision that employees of government agencies convicted of such misdemeanors may not lawfully possess or receive firearms and ammunition. In conjunction with the new prohibited person category, regulations are also prescribed to require purchasers of handguns to state on the Brady Form, ATF Form 5300.35, that they have not been convicted of a misdemeanor crime of domestic violence.

In addition, the temporary rule implements the amendment to the Gun Control Act allowing Federal firearms licensees to engage in the business of dealing in curio or relic firearms with another licensee away from their licensed premises. The temporary regulations also serve as the text of this

notice of proposed rulemaking for final regulations.

**DATES:** Written comments must be received on or before September 28, 1998.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attn: Notice No.

**FOR FURTHER INFORMATION CONTACT:** Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226 (202–927–8210).

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

### Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is in 27 CFR 178.130(a)(1) and 178.134. This information is required to prevent the purchase of handguns by persons convicted of a misdemeanor crime of domestic violence. The likely respondents are individuals.

Estimated total annual reporting burden per respondent: .1 hours. Estimated number of respondents: 8,000,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

### Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should suhmit his or her request in writing, to the the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR part 178. For the text of the temporary regulations, see T.D. ATF—published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information: The author of this document is Barry Fields, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: February 18, 1998.

**John W. Magaw,**

*Director.*

Approved: April 24, 1998.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 98–17287 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–31–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD07–97–020]**

**RIN 2115–AE47**

## Drawbridge Regulations; Atlantic Intracoastal Waterway, Florida

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations governing the operation of the Flagler Memorial, Royal Park, and Southern Boulevard drawbridges at Palm Beach. The Coast Guard has reconsidered its original proposal in the NPRM published on August 12, 1997, to change both the seasonal weekday and weekend operating imstructions for the bridges, and now is proposing to change only the seasonal weekday opening instructions, including eliminating the existing weekday openings at 8 a.m. on the Flagler Memorial bridge and at 8 a.m. and 5 p.m. on the Royal Park bridge, while retaining the other provisions in the original NPRM extending the seasonal opening period by one month and establishing a 30 minutes opening schedule for the Southern Boulevard Bridge during seasonal weekdays.

**DATES:** Comments must be received on or before August 31, 1998.

**ADDRESSES:** Comments may be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m. Monday through Friday, except federal holidays. The telephone number is (305) 536–6546. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for

inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Evelyn Smart, Project Manager, Bridge Section, (305) 536–6546.

**SUPPLEMENTARY INFORMATION:**

## Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking [CGD07–97–020] and the specific section of this revised proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in any unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. If may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Ms. Evelyn Smart at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

## Regulatory History

On August 12, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (62 FR 43132). The NPRM proposed to change the regulations governing the operation of the Flagler Memorial, Royal Park, and Southern Boulevard drawbridges in Palm Beach, Florida. In response to the NPRM, the Coast Guard received objections from the Florida Inland Navigation District, the Marine Industries of Palm Beach and several local residents, expressing their concern about seasonal weekend openings being limited to set times vice opening on signal.

## Background and Purpose

The Coast Guard's original proposal included commencing the seasonal opening schedules for all three bridges a month earlier on 1 October to help reduce traffic congestion and proposed seasonal 30 minute weekend and holiday opening schedules for all three bridges. It also proposed creating a 30 minute opening schedule for the Southern Boulevard Bridge during seasonal weekdays.

## Discussion of Comments

Four comments were received on the original NPRM stating that the proposed weekend opening schedules during the winter season would place an undue burden on the boating public, and that the local community benefited from an increase in boater traffic. The Coast Guard agreed, and has eliminated the proposed seasonal weekend opening schedules from this revised proposal. Therefore, all three bridge will still operate on signal on the weekends. One comment was received requesting that the seasonal 8 a.m. opening on the Flagler Memorial bridge and the 8 a.m. and 5 p.m. openings on the Royal Park bridge be removed because of their effect upon commuter rush hour traffic. The Coast Guard agreed that there is a significant increase in commuter traffic during this period, and is eliminating those rush hour openings in this revised proposal. Two comments were received requesting the Coast Guard to extend the winter operating schedule year round. The Coast Guard disagreed, as there is a not a present need to restrict openings during the off season because of the decrease in commuter traffic during that time.

## Discussion of the Revised Proposal

The Coast Guard reviewed its original proposal and determined that the significant increase in vessel traffic on weekends was beneficial to the local community and should not be unreasonably impacted by bridge opening instructions which did not provide clearly offsetting benefits to the seasonal traffic across the bridge. Therefore, the proposed changes to the weekend opening schedules have been removed from this revised proposal and the weekend opening schedules have been modified to remove the existing 8 a.m. opening on the Flagler Memorial bridge and the 8 a.m. and 5 p.m. openings on the Royal Park Bridge, which have significantly impacted the flow of highway commuter traffic.

These revised regulations would maintain the existing seasonal weekday 30 minute opening schedule for Flagler Memorial and Royal Park Bridges, and add the seasonal weekday 30 minute opening schedule to the Southern Boulevard Bridge which now operates on signal. The seasonal restrictions for all three bridges would start one month earlier on 1 October to help reduce traffic congestion created by earlier arrival of seasonal visitors to the Palm Beach areas. This changes is intended to relieve seasonal highway congestion while still meeting the reasonable needs of navigation.

The amended regulations still provide an exception to the opening schedules for public vessels of the United States, tug vessels with tows, and vessels in situations where a delay would endanger life or property.

## Regulatory Evaluation

This revised proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not a significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because this revised proposal does not effect the exemptions for tugs with tows and emergency situations already contained in the regulations.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this revised proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this revised proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because of the exemption for tugs with tows. If however, you think that your business or organization qualifies as a small entity and that this revised proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think you qualify and in what way and to what degree this proposed rule will economically affect you.

## Collection of Information

This revised proposal contains no collection of information requirements

under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this revised proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard considered the environmental impact of this revised proposal and has determined pursuant to section 2.B.2.a (CE #32(e)) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A categorical exclusion determination for this rulemaking is available in the public docket for inspection and copying.

**List of Subjects in 33 CFR Part 117**

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.261 revised paragraphs (u), (v) and (w) to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.**

* * * * *

(u) Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach. The draw shall open on signal; except that from October 1 to May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m. From 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(v) Royal Park (SR 704) bridge, mile 1022.6 at Palm Beach. The draw shall open on signal; except that from October 1 through May 31, Monday through Friday except Federal holidays, from 7:45 a.m. to 9:45 a.m. and from 3:30 p.m., to 5:45 p.m., the draw need open only at 8:45 a.m., 4:30 p.m., and 5:15 p.m. From 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(w) Southern boulevard (SR 700/80) bridge, mile 1024.7 at Palm Beach. The draw shall open on signal; except that, from October 1 through May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:15 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m. From 9:15 a.m. to 4:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

* * * * *

Dated: June 23, 1998.

**Norman T. Saunders,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 98–17370 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration For Children and Families

## 45 CFR Part 1303

**RIN: 0970–AB87**

## Head Start Program

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Administration on Children, Youth and Families is issuing this Notice of Proposed Rulemaking to propose timelines for the conducting of administrative hearings on adverse actions taken against Head Start grantees and to make additional changes to the regulations designed to expedite the appeals process.

**DATES:** In order to be considered, comments on this proposed rule must be received on or before August 31, 1998.

**ADDRESSES:** Please address comments to the Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families, PO Box 1182, Washington, DC 20013. Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 2219, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jim S. Kolb (202) 205–8580.

**SUPPLEMENTARY INFORMATION:**

### I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1996, Head Start served 752,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

### II. Summary of the Proposed Regulation

The authority for this Notice of Proposed Rulemaking (NPRM) is section 646 of the Head Start Act (42 U.S.C. 9841), as amended by Pub. L. 103–252, Title I of the Human Services Amendments of 1994. ACF proposes to make changes to the regulations designed to expedite the appeals process and as specifically required by section 646(c) to specify a timeline for administrative hearings on adverse actions taken against grantees, and a timeline by which the person conducting the administrative hearing shall issue a decision based on the hearing. The proposed rule implements these requirements.

Overall, this proposed rule on timelines, including the conforming changes to other affected sections of the appeals requirements in part 1303, will have the effect of saving time and expenses while continuing to allow due process to a grantee appealing a proposed termination or denial of refunding decision. In the past, a number of appeal proceedings have been protracted and costly partly because of the absence of statutory or regulatory timelines for holding a

hearing. Under the proposed timelines, decisions can be rendered in a shorter period of time thus allowing quicker removal of a deficient grantee. This will help ensure that children and their families receive high quality Head Start services from a qualified provider.

## III. Section by Section Discussion of the NPRM

*Section 1303.14 Appeal by a Grantee from a Termination of Financial Assistance*

The proposed rule makes several changes to this section. ACF is proposing to revise section 1303.14(c)(1) to state in greater detail the information which it must include in letters of termination. Under the proposed regulation the Agency will be required to state the legal basis for termination, the factual findings on which the termination is based, or reference to specific findings in another document that form the basis for the termination (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which the Agency is relying for its determination. This change will reduce the need for the Agency to supplement its initial notice with additional filings after the appeal is filed and thereby streamline and expedite the appeals process.

The Agency is also proposing to amend the regulation to increase the amount of time for a grantee to appeal a termination from 10 days to 30 days. The change is being made to give grantees more time in which to develop their initial appeal submission. More complete submissions will allow quicker resolutions of appeals. This increase in time to file appeals carries with it more responsibility for filing properly, as discussed below.

The last sentence in § 1303.14(c)(2) is being deleted because the standard for content of the request for a hearing will now appear in the revised § 1303.14(d).

The Agency is also proposing new language for § 1303.14(d) which requires the grantee to state in more detail the basis of its appeal of the termination. This change will reduce the need for the grantees to supplement their initial request for a hearing with additional filings and thereby streamline and expedite the appeals process. ACF is also proposing a change in § 1303.14(c)(5) to make it consistent with the new § 1303.14(d). A new § 1303.14(c)(6) is added to provide for two sanctions against ACF in the event that a notice of termination is deficient.

If in the judgment of the Departmental Appeals Board a grantee fails to comply with these requirements in a substantial manner its appeal must be rejected, with prejudice. The burden shall be on a grantee to show good cause for any failure to comply with these requirements. Workload difficulties shall not normally constitute good cause, unless the Departmental Appeals Board determines that adjustments cannot be made by the grantee and that the conflicting matters reasonably take precedence over the expeditious conduct of the appeal. Thus, for example, a grantee must show extenuating circumstances for its failure to provide documents in its possession at the time of its appeal and to raise arguments or objections that would logically be raised or made in light of the notice of termination. If the failure is not substantial, the appeal may proceed, but the omitted document must be excluded and the omitted argument or objection barred. These provisions flow from the purpose of these changes, which is to expedite appeals, and in light of the fact that grantees will have twenty more days to file their appeals than is the case under current regulations. The proposed regulation does provide relief from the sanctions under exceptional circumstances, as the Departmental Appeals Board may determine in accordance with the regulations. The new paragraph on sanctions is (e).

The current § 1303.14(e) is deleted and a portion of its contents revised and added as the last sentence in the new paragraph (d)(7) of this section. It would require the grantee to serve notice of the appeal and request for a hearing on any delegate agency which would be financially affected at the time the grantee files its appeal. However, failure to do so would be between the delegate and grantee and would not prevent the non-renewal or termination action from proceeding. Any remedy would be between the grantee and delegate agency.

The proposed revision of § 1303.14(g) to be redesignated as (i) includes a new requirement that delegate agencies, requesting an opportunity to participate in a hearing, must do so within 30 days of the grantee's request for a hearing. This new requirement is consistent with the overall thrust of the proposed provision which is to minimize delays and require the parties to eliminate possible sources of delay in the proceedings.

*Section 1303.15 Appeal by a Grantee From a Denial of Refunding*

ACF is proposing to revise paragraph (b)(2) of this provision to give grantees 30 instead of 10 days in which to appeal denial of refunding. This proposed change will make this provision consistent with revised § 1303.14(c)(2). The additional time will allow grantees to provide more complete submissions which will allow quicker resolutions of appeals. The proposed revision to paragraph (d) will require ACF to state in more detail the basis of the decision to deny refunding to a grantee. The additional information in the notice will reduce the need for the Agency to supplement its initial notice with filing after the appeal is filed and thereby streamline and expedite the appeals process. Paragraph (d) also provides for two sanctions against ACF in the event that a notice of denial of refunding is deficient. The Agency also is proposing to add paragraphs (f), (g) and (h) to 45 CFR 1303.15 to make the procedures for appeals of denials of refunding consistent with those for termination appeals in 45 CFR 1303.14.

*Section 1303.16 Conduct of Hearing*

The proposed revision would specifically require the parties to use prepared written direct testimony. ACF's experience with prepared written testimony has shown it is more efficient in terms of clear presentation of direct testimony and the reduction of hearing time and expense, including the absence of agency staff from their normal duties. Direct testimony is the testimony of witnesses in response to the questions of the attorney for the party which called them. After a witness's direct testimony is presented to the Board, the attorney for the opposing party has an opportunity to cross examine, and the attorney for the party which called the witness has another opportunity to ask additional questions, a process known as ''redirect examination.'' Prepared direct testimony by parties eliminates the need for live direct testimony at the hearing. However, cross examination and redirect examination will be live at the hearing. This permits the presiding member to assess witness credibility through direct observation. Use of prepared written direct testimony by the parties can result in a significant reduction in the amount of time needed for a hearing and the cost of compiling transcripts of hearings. Based on it own experience, ACF believes this approach will contribute to streamlining the Head Start appeals process. Changes also are proposed in the wording of 45 CFR 1303.16(e) to make it consistent with the

proposed changes in 45 CFR 1303.14(e) and (g).

*Section 1303.17 Time for hearing and decision*

This proposed rule implements section 646(c) of the Head Start Act, which directs the Secretary to specify timelines for commencing hearings and rendering decisions.

The Head Start Act and implementing regulations in 45 CFR part 1303 seek to strike a balance between the need to ensure that all Head Start programs are of high quality and are responsive to the families they serve, on the one hand, and protection of existing grantees from arbitrary or baseless adverse actions, on the other. Assuring that all Head Start programs provide quality services is a goal of the Department and the Congress, as reflected in the report of the Advisory Committee on Head Start Quality and Expansion and the amendments made to the Head Start Act by Title I of the Human Services Amendments of 1994. Those amendments added section 641A of the Act (42 U.S.C. 9836A) which, in subsection (d), sets out in detail the actions which must be taken with respect to a grantee which has been found, during an on-site review, to have quality deficiencies. This subsection directs the Secretary to require programs to correct all identified deficiencies either immediately or within one year of notification by the Department of the deficiencies under an approved Quality Improvement Plan. The Department must initiate proceedings to terminate the Head Start grant of any agency which does not correct all identified deficiencies within the prescribed time frames. Grantees which wish to appeal a proposed termination may do so to the Department of Health and Human Services Departmental Appeals Board.

The proposed rule requires that any hearing of an appeal by a grantee from a notice of suspension, termination or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal, whether or not there is a hearing, must be rendered not later than 60 days after the close of the proceedings, including submission of the briefs and the holding of oral argument, if allowed or required by the Departmental Appeals Board.

Currently, there are no timelines for the hearings or the decisions on appeals by grantees. The proposed timelines will ensure an expeditious and more predictable review process, allow sufficient time for consideration of the case, and protect the grantees' statutory right to the opportunity for a full and fair hearing.

## IV. Impact Analysis

*Executive Order 12866*

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements the statutory requirement for Head Start grantee appeals to be heard and decided within certain, defined time frames.

*Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. For this reason, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This NPRM does not contain any information collection or record-keeping requirements.

## List of Subjects in 45 CFR Part 1303

Administrative practice and procedure, Education of the disadvantaged, Grant—programs-social programs, Reporting and recordkeeping requirements.

(Catalog of Domestic Assistance Program Number 93.600, Project Head Start)

Dated: December 24, 1997.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: March 20, 1998.

**Donna E. Shalala,**

*Secretary.*

For the reasons set forth in the Preamble, 45 CFR part 1303 is proposed to be amended to read as follows:

## PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

1. The authority citation for part 1303 continues to read as follows:

**Authority:** 42 U.S.C. 9801 *et seq.*

2. Section 1303.14 is amended by revising paragraphs (c)(1), (2) and (5); removing paragraph (e); redesignating paragraphs (d) and (f) through (j) as paragraphs (f) through (r); adding new paragraphs (c)(6), (d) and (e); and revising the newly redesignated paragraph (i) to read as follows:

**§ 1303.14 Appeal by a grantee from a termination of financial assistance.**

* * * * *

(c) A notice of termination shall set forth:

(1) The legal basis for the termination under paragraph (b) of this section, the factual findings on which the termination is based or reference to specific findings in another document that form the basis for the termination (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

(2) The fact that the termination may be appealed within 30 days to the Departmental Appeals Board (with a copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeal shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee that requests a hearing, shall be afforded one, as mandated by 42. U.S.C. 9841.

* * * * *

(5) That the grantee's notice of appeal and request for hearing must meet the requirements set forth in paragraph (d) of this section.

(6) That a failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the termination action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(d) A grantee's notice of appeal and request for hearing must:

(1) Be in writing;

(2) Specifically identify what factual findings are disputed;

(3) Identify any legal issues raised, including relevant citations;

(4) Include an original and two copies of each document the grantee believes is relevant and supportive of its position (unless the grantee has obtained permission from the Departmental Appeals Board to submit fewer copies);

(5) Include any request for specifically identified documents the grantee wishes to obtain from ACF, a statement of the relevance of the requested documents, and a statement that the grantee has attempted informally to obtain the documents from ACF and was unable to do so;

(6) Include a statement on whether the grantee is requesting a hearing; and

(7) Be filed with the Departmental Appeals Board and be served on the ACF official who issued the termination notice. The grantee must serve notice of the appeal and any request for a hearing on any delegate agency which would be financially affected at the time the grantee files its appeal.

(e) The Departmental Appeals Board sanctions with respect to a grantee's notice of appeal and request for hearing are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantees's failures are not substantial, but are confined to a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other ''discovery'' request not timely made.

(3) The sanctions set forth in paragraphs (e) (1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failures to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

* * * * *

(i) If the responsible HHS official initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's notice of appeal and request for hearing.

* * * * *

3. Section 1303.15 is amended by revising paragraphs (b)(2) and (d) (1) and adding new paragraphs (d)(4), (f), (g) and (h) to read as follows:

**§ 1303.15 Appeal by a grantee from a denial of refunding.**

* * * * *

(b) * * *

(2) Any such appeals must be filed within 30 days after the grantee receives notice of the decision to deny refunding.

* * * * *

(d) * * *

(1) The legal basis for the denial of refunding under paragraph (a) of this section, the factual findings on which the denial of refunding is based or references to specific findings in another document that form the basis for the denial of refunding (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

* * * * *

(4) A statement that failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the denial of refunding action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

* * * * *

(f) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantees, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(g) Paragraphs (j), (k), and (l) of 45 CFR 1303.14 shall apply to appeals of denials of refunding.

(h) The Departmental Appeals Board sanctions with respect to a grantee's appeal of denial of refunding are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantees's failures are not substantial, but are confined to a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or a document or other ''discovery'' request not timely made.

(3) The sanctions set forth in paragraphs (h) (1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failures to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

4. Section 1303.16 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h); adding a new paragraph (d); and revising newly redesignated paragraph (f) to read as follows:

**§ 1303.16 Conduct of hearing.**

* * * * *

(d) Prepared written direct testimony will be used in appeals under this part in lieu of oral direct testimony. When prepared written direct testimony is submitted by the parties, witnesses must be available at the hearing for cross-examination and redirect examination. If a party can show substantial hardship in using prepared written direct testimony, the Departmental Appeals Board may exempt it from the requirement. However, such hardship must be more than difficulty in doing so, and it must be shown with respect to each witness.

* * * * *

(f) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which must be made within 30 days of the grantee's notice of appeal and request for hearing in the case of the appeal of termination or denial of refunding, and as soon as possible after the notice of suspension has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

5. Section 1303.17 is added to read as follows:

**§ 1303.17 Time for hearing and decision.**

(a) Any hearing of an appeal by a grantee from a notice of suspension, termination or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal whether or not there is a hearing must be rendered not later than 60 days after the close of the proceedings, including submission of the briefs and oral argument, if allowed or required by the Departmental Appeals Board, and completion of final transcripts and any other applicable corrections to them.

(b) All hearings will be conducted expeditiously and without undue delay or postponement.

(c) The time periods established in paragraph (a) of this section may be extended if:

(1) The parties jointly request a stay to engage in settlement negotiations;

(2) Either party requests summary disposition; or

(3) The Departmental Appeals Board determines that the Board is unable to hold a hearing or render its decision within the specified time period for reasons beyond the control of either party or the Board.

[FR Doc. 98–17296 Filed 6–29–98; 8:45 am]

BILLING CODE 4184–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 90

**[ET Docket No. 98–95; FCC 98–119]**

### Dedicated Short Range Communications of Intelligent Transportation Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing to allocate 75 megahertz of spectrum for use by Dedicated Short Range Communications (''DSRC'') of Intelligent Transportation Systems (''ITS''). DSRC systems are being designed that require a short range, wireless link to transfer information between vehicles and roadside systems. ITS services are expected to improve traveler safety, decrease traffic congestion, and facilitate reduction of air pollution and conservation of fossil fuels. This action furthers the goals of the U.S. Congress, Department of Transportation and the ITS industry to improve the efficiency of the Nation's transportation infrastructure and to facilitate the growth of the ITS industry.

**DATES:** Comments are due September 14, 1998, reply comments are due October 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Tom Derenge, Office of Engineering and Technology, (202) 418–2451.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket 98–95, FCC 98–119, adopted June 11, 1998, and released June 11, 1998 . The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

### Summary of the Notice of Proposed Rule Making

1. On May 19, 1997, the Intelligent Transportation Society of America (''ITS America'') filed a Petition for Rulemaking (''Petition'') requesting that the Commission allocate 75 megahertz of spectrum in the 5.850–5.925 GHz band on a co-primary basis for DSRC-based ITS services. The Petition states that DSRC links are needed for eleven ITS user services and places DSRC needs into three categories: current DSRC applications; emerging DSRC applications; and future DSRC applications.

2. The 5.850–5.925 GHz band is allocated internationally on a primary basis for Fixed Services, Fixed Satellite Service (''FSS'') Earth-to-space links (''uplinks''), and Mobile Services. Additionally, in Region 2, this band is allocated on a secondary basis to the Amateur Radio Service and the Radiolocation Service. Finally, the 5.850–5.875 GHz segment is designated internationally for industrial, scientific and medical (''ISM'') applications. Domestically, the entire band is currently allocated on a co-primary basis for the Government's Radiolocation Service (i.e., for use by high-powered military radar systems) and for non-Government FSS uplink operations. ISM devices and unlicensed part 15 devices are also permitted to operate in the 5.850–5.875 GHz segment. Finally, the Amateur Radio Service has a secondary domestic allocation in the entire band.

3. We propose to allocate 75 megahertz of spectrum, at 5.850–5.925 GHz, to the Mobile Service and to designate its use for DSRC operations. We tentatively conclude that this significant amount of proposed spectrum would further the goals of the National ITS program and encourage the development of advanced technologies to increase the safety and efficiency of the national transportation infrastructure well into the future. Additionally, a 75 megahertz allocation should enable avoidance of occupied frequencies in areas where incumbent use is heavy and should be sufficient to meet the spectrum demands of future DSRC operations, such as Automated Highway Systems, which could require several dedicated wideband channels to ensure reliability. We request comment on whether this proposed allocation is excessive given that efficient spectrum use techniques exist and our goal of promoting spectrum efficiency. We welcome alternative suggestions for an allocation for DSRC.

4. We believe that spectrum sharing between FSS and DSRC operations may be possible. However, we seek comment on the likely future needs for this spectrum for FSS earth stations. In this regard, we note that given the much higher power of FSS operations and the relatively low power of DSRC operations, individual DSRC operations are unlikely to cause harmful interference to incumbent FSS satellite operations. We also do not expect that DSRC devices in the aggregate would negatively impact existing or future FSS operations, particularly given that there are several other potentially significant contributors to the overall noise level in this band, such as government radars and ISM devices. We request comment on this preliminary assessment. We also seek comment on what, if any, effects the widespread deployment of DSRC devices could have on future development of FSS operations in this band. In this regard, we observe that widespread deployment of mobile devices, including devices with potential public safety uses, could make it more difficult to coordinate new FSS operations. We also seek comment on whether there are any instances in which DSRC services might be unacceptably impaired by FSS operations. We seek comment on whether terrain shielding, directional antennas, RF fencing and other techniques can be employed by DSRC operators to avoid receiving or causing interference. Alternatively, should interference situations arise where the two services are not compatible in a specific area or over a range of frequencies, we request comment on the feasibility of relocating the FSS operations to other geographic areas or frequency bands using the principles outlined in the Emerging Technologies

rulemaking. That is, if the DSRC licensee needs spectrum used by an FSS licensee, the DSRC entity would be responsible for the expense of modifying the FSS uplink to another location or frequency and ensuring that the FSS entity is able to achieve comparable operations.

5. Unlicensed low power operations in the 5.850–5.875 GHz segment may be affected by this potential allocation. Although unlicensed devices have no allocation status and are not protected by our rules, we believe that the provision of hearing assistance devices to those with disabilities is a valuable service in the public interest. At present, any mobile part 15 hearing assistance device operating in the 5.850–5.875 GHz band could encounter interference problems from various higher powered incumbent operations such as Government radar operations, FSS and ISM operations. Therefore, we request comment on whether the 5.850–5.875 GHz segment is currently being used for hearing assistance device operations, the likelihood of any such future uses, and whether any measures can or should be taken to protect such uses.

6. We acknowledge that amateur operations are permitted to operate at up to 1.5 kW PEP output with high gain antennas which could interfere with DSRC receivers if operated on similar frequencies in the same geographic area. Nevertheless, amateur operations have access to 275 megahertz in the 5.650–5.925 GHz band and we believe any amateur use of the 5.9 GHz range could be engineered to avoid DSRC operations. Also, amateurs may be able to continue use of these frequencies in rural areas where DSRC applications may not be extensively deployed. We anticipate that any interference problems that may develop between amateur stations and DSRC operations could be resolved by changing the frequency of the amateur operation in order to protect primary status operations or by other engineering techniques, such as power reduction or directional antennas.

7. We tentatively conclude that DSRC-based ITS services can share spectrum with incumbent operations in this frequency range. We request comment on this issue and solicit further analysis of the spectrum sharing potential between DSRC-based operations and the incumbent use of the 5.850–5.925 GHz band.

8. We believe it is necessary to outline an order of responsibility in resolving interference problems, if they occur. Specifically, we note that DSRC operations are not likely to interfere with Government radar operations and ISM operations, but the reverse may not always be the case. We propose to require DSRC operations to accept interference generated by ISM operations in this range, as is generally the case in ISM bands. Additionally, we note that DSRC operations, Government radar operations and FSS Earth-to-space operations would operate on a co-primary basis in this frequency range. Therefore, we propose to place the responsibility for coordination equally on each of those operations through the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee. As is generally the case with co-primary services, any licensee initiating new or modified service in the band would be required to avoid interference to existing operations. Finally, secondary amateur operations would not be permitted to cause harmful interference to primary licensed operations in this frequency range. Nonetheless, to the extent that DSRC applications may operate on an unlicensed basis under part 15, they would be required to avoid causing interference to and cannot claim interference protection from all operations with secondary and primary allocation status. We request comment on this issue and encourage suggestions for alternative approaches.

9. As is always the case for FCC approved devices, we will require all DSRC equipment to comply with our RF safety guidelines. We believe this level of protection is appropriate and will not result in the generation of unsafe levels of RF energy. We request comment, on whether any specific aspects of our RF safety guidelines are inappropriate for the deployment of DSRC equipment.

10. We solicit comment and proposals for a channelization plan. We encourage commenters and standards setting organizations to consider and discuss the following factors in developing a DSRC channelization plan: optimization of spectrum use; use of informal standards to promote compatibility or interoperability of certain DSRC applications; flexible channel options for emerging services; diversity of DSRC services; and equipment affordability. For example, a proposed DSRC channelization plan could provide for a few wideband channels for certain purposes, such as backscatter automatic toll collection, and reserve a number of narrowband channels for active transponder DSRC services or other services with smaller data throughout requirements. We request comment on whether provision for different channel bandwidths for different data requirements or technologies would significantly effect the viability or cost of DSRC equipment. Further, we request comment specifically on whether to permit use of both passive and active DSRC devices and on whether and how reliance on informal DSRC technical standards, as opposed to Commission-adopted standards, may facilitate a smoother transition or integration among DSRC technologies.

**Initial Regulatory Flexibility Certification, and Voluntary Initial Regulatory Flexibility Analysis (Voluntary IRFA)**

11. The Regulatory Flexibility Act (''RFA''),[1] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''[2] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

12. This *Notice of Proposed Rule Making* (''NPRM'') proposes to allocate the 5.850–5.925 GHz band to the Private Land Mobile Service (''PLMS'') for use by Dedicated Short Range Communications Services (''DSRCS'') in the provision of Intelligent Transportation Services (''ITS''). DSRCS communications are used for non-voice wireless transfer of data over short distances between roadside and mobile radio units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety and other intelligent transportation service applications in a variety of public and commercial environments. This action is taken in response to a Petition for Rulemaking filed by the Intelligent Transportation Society of America (''ITS America''). While this *NPRM* does propose an allocation and some basic technical

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

parameters, the issues of licensing, channelization, and other complex technical matters are being deferred to a later proceeding. Therefore, because this present action will not result in the provision of these operations, we certify that this action will not have a significant economic impact on a substantial number of small entities.

13. Despite the certification, we have performed a voluntary Initial Regulatory Flexibility Analysis (IRFA), below, to create a fuller record in this proceeding and to give more information to entities, small and not, that might be affected by our action. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of the *NPRM*, including this certification and voluntary analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

*A. Need for, and Objectives of, the Proposed Rules*

14. The objective of this action is to provide sufficient spectrum to permit the development of DSRCS technologies to improve the nation's transportation infrastructure and bolster the involvement of United States companies in this emerging industry.

*B. Legal Basis*

15. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r).

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

16. The 5.85–5.925 GHz band is currently available to the U.S. Federal Government for Radiolocation purposes, Fixed Satellite Service licensees for international intercontinental links, amateur radio operators and by various entities using part 18 Industrial, Scientific and Medical (''ISM'') equipment and part 15 unlicensed device equipment. We note that there are only 45 FSS licenses issued for operation in 5.85–5.925 GHz band and most if not all are held by large corporations. Further, amateur radio operators and the Federal Government do not qualify as small entities. We also note that part 18 ISM devices are protected in this band, which only generate electromagnetic energy, are not used for communication purposes and therefore cannot receive interference or be impacted by this action. Finally, while part 15 unlicensed devices are permitted to operate in the 5.85–5.875 GHz portion, they do so on an unlicensed, unprotected basis. Further, the Commission has no means to determine the number of small entities that might use unlicensed part 15 equipment that operates in the band at issue. The *NPRM* discusses means by which the potential DSRCS would be able to share the spectrum with incumbent operations and requests comment on ways to ensure such spectrum sharing. Accordingly, we do not believe this action would have a negative impact on small entities that operate in the 5.85–5.925 GHz band, but nevertheless request comment on this assessment.

17. Regarding the Fixed Satellite Service licensees for international intercontinental links, the Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[3] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[4] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[5] The Census report does not provide more precise data.

18. Regarding the future use of the 5.85–5.925 GHz band by DSRCS equipment, we believe it is too early to make an determination on such operations. A future rulemaking proceeding will propose further technical standards, licensing and service rules and a separate regulatory flexibility analysis will address all issues relevant to that proceeding.

*D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

19. We are proposing to allocate this spectrum for a new service. The licensing and technical regulations governing these operations will be addressed in a separate proceeding. Therefore, this proposed action does not create any reporting or compliance requirements.

[3] An exception is the Direct Broadcast Satellite (DBS) Service.

[4] 13 CFR 120.121, SIC code 4899.

[5] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

*E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

20. The *NPRM* proposes basic technical rules such as power limits, unwanted emission limits and a frequency stability requirement. It also requests comment on whether operational standards should be adopted to facilitate nation-wide interoperability of DSRCS. The development of DSRCS operational standards could delay the initial deployment of such equipment, but could ultimately result in equal footing for all manufacturers, including small entities, in producing equipment that meets uniform standards. We request comment on further alternatives that might minimize the amount of economic impact on small entities.

*F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules*

21. None.

**List of Subjects in 47 CFR Parts 2 and 90**

Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–17314 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[I.D. 061998C]**

## Fisheries of the Northeastern United States; Petition for Rulemaking for Rotational Opening of Georges Bank Closed Areas for Scallop Fishing

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

**ACTION:** Notice of receipt of petition for rulemaking; request for comments.

**SUMMARY:** NMFS announces receipt of, and requests public comment on, a petition for rulemaking requesting that sea scallop harvest be allowed on a rotational basis in areas of Georges Bank that are currently closed to all vessels capable of catching groundfish, including scallop vessels. David E. Frulla, of Brand, Lowell, and Ryan (Petitioner), has petitioned the Secretary of Commerce (Secretary), on behalf of

the Fisheries Survival Fund, to determine where in the Georges Bank closed areas scallops are large in size and number and where primary groundfish are more susceptible to scallop gear, to better target and optimize scallop fishing while still maximizing recovery of primary groundfish stocks and habitat. The Petitioner requests that when the data collection has been completed, emergency action be taken to open portions of Georges Bank currently closed to scallop fishing, which would be balanced by closing some currently open areas.

**DATES:** Comments on the petition are requested on or before August 31, 1998.

**ADDRESSES:** Copies of the petition for rulemaking are available upon request from Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the petition should be directed to Dr. Gary C. Matlock at the above address. Please mark the outside of the envelope ''Rotational Opening of Scallop Closed Areas.''

**FOR FURTHER INFORMATION CONTACT:** Mark R. Millikin, 301–713–2341.

**SUPPLEMENTARY INFORMATION:** The fishery affected by this petition for rulemaking is the Atlantic sea scallop fishery, which is managed under the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). The Secretary has management authority for this species group under the Magnuson-Stevens Fishery Conservation and Management Act. The management unit for this fishery is Atlantic sea scallop (*Placopecten magellanicus*) in U.S. waters of the Atlantic Ocean from North Carolina to Newfoundland along the continental shelf of North America. Implementing regulations for the fishery are found at 50 CFR part 648, subpart D.

The scallop advisory report issued from the 23rd Stock Assessment Workshop in March 1997 stated that the current spawning stock biomass (SSB) is at a low level and the level of landings is determined primarily by variations in the number of recruits entering the fishery. On Georges Bank, abundance and fishing mortality are at moderate levels, but this results from approximately one-half of the region currently being closed to fishing via the groundfish closed areas to protect depleted stocks of cod, haddock, and yellowtail flounder. Scallop dredges were included in the fishing ban owing to their propensity to catch juvenile flatfish and other species whose stocks had collapsed. The scallop stock is rebuilding in these closed areas, but elsewhere on Georges Bank fishing mortality is greater than the current overfishing threshold. Overfishing for Atlantic sea scallops is defined in the FMP as the fishing mortality rate greater than the rate that would maintain an SSB that is 5 percent of the SSB level that would exist without fishing. The report further states that scallops in the Mid-Atlantic region are at a low level of abundance, are overexploited, and are declining. The large 1990 and 1991 year classes have been overfished and incoming recruitment is among the lowest on record. Based on high fishing mortality rates, low stock size, and lack of significant recruitment, the management advice from the Northeast Stock Assessment Workshop is that fishing effort should be reduced immediately and significantly in the Mid-Atlantic region to preserve SSB and to improve yield per recruit. Recent results of the 1997 NMFS survey confirm that trends in abundance and biomass in both the Mid-Atlantic and Georges Bank regions are decreasing.

The Petitioner states that the Georges Bank groundfish closures, which have been in effect since December 1994, are causing an imbalance in fishing effort, thereby making scallop rebuilding more difficult to achieve. He is requesting that information collected from the Georges Bank area on the scallop resource begin by July 1998, after which emergency action should be instituted to open areas of Georges Bank through limited rotational openings, coupled with closures of certain portions of currently open areas. He states that NMFS analyses have already concluded that such rebalancing should help scallop stocks and moderate the worst of the impending economic effects for the scallop fishermen.

NMFS requests interested persons to submit comments on the petition for rulemaking submitted by the Petitioner. NMFS will consider this information in determining whether to proceed with the development of regulations requested by the petition.

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

Dated: June 24, 1998.

**Bruce C. Morehead,**

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

[FR Doc. 98–17340 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[I.D. 061998B]**

## Western Pacific Fishery Management Council; Public Hearing

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold a public hearing to discuss proposed measures to address the requirements of the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act) through an amendment to all of the Council's fishery management plans that will address new provisions and definitions.

**DATES:** The meeting will be held on July 20, 1998, from 6:00 p.m. to 8:00 p.m.

**ADDRESSES:** The meeting will be held in the conference room of the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director, at (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** The public is invited to discuss and make recommendations to the Council on the provisions of the Magnuson-Stevens Act pertaining to essential fish habitat, bycatch, fishing sectors, fishing communities, and definitions of overfishing.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: June 24, 1998.

**Bruce C. Morehead,**

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

[FR Doc. 98–17341 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 63, No. 125
Tuesday, June 30, 1998

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

June 26, 1998.

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 Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 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.

### Animal and Plant Health Inspection Service

*Title:* 7 CFR 319, 321, 352—Foreign Quarantine Notices.

*OMB Control Number:* 0579–0049

*Summary of Collection:* The United States Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States. The Plant Quarantine Act and the Federal Plant Pest Act authorize the Department to carry out this mission. Section 1 of the Plant Quarantine Act (7 U.S.C. 154) requires the Secretary of Agriculture to issue a permit for the importation into the United States of any nursery stock, and to prescribe conditions and regulations for issuing these permits. Section 5 of the Plant Quarantine Act (7 U.S.C. 159) authorizes the Secretary to determine whether the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds or other plant products not included by the term ''nursery stock'' will result in the introduction of plant diseases or insect pest into the United States, and to then specify which of these products will be subject to the provisions of Section 1 of the Plant Quarantine Act. Implementing the laws is necessary in order to prevent injurious plant and insect pests from entering the United States, a situation that could produce serious consequences for Agriculture. Accordingly, the Animal Plant and Health Inspection Service (APHIS) uses a number of forms and documents to collect information on planned importations of plants, fruits, vegetables and/or plan products to the United States.

*Need and Use of the Information:* APHIS is required to collect information from a variety to individuals, both within and outside of the United States, who are involved in growing, packing, handling, transporting, and importing foreign plants, fruits, vegetables, roots, bulbs, seeds, and other plant products. The information that APHIS collects is vital to helping ensure that these products do not harbor plant or insect pests.

*Description of Respondents:* Business or other for-profit; Individual or households; Not-for-profit institutions; Farms; State, Local or Tribal Government.

*Number of Respondents:* 53,271.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 88,232.

### Assistant Secretary for Administration, Office of Civil Rights

*Title:* Collection of Information on Women in Agriculture.

*OMB Control Number:* 0508–NEW.

*Summary of Collection:* USDA's Office of Civil Rights, Accountability Division was formed and assigned responsibility for collecting data and measuring USDA's program delivery, procurement, export, and business development activities to women. The Accountability Division is seeking approval of an information collection to survey participants at the Second International Conference on Women in Agriculture to gather demographic data on women in agriculture and, more specifically, information on customer satisfaction with USDA programs and services. The conference will be held in Washington, D.C. June 28–July 2.

*Need and Use of the Information:* The information will be collected through an automated survey using computer workstations positioned at various sites throughout the conference facility. The information will be used by USDA's Office of Civil Rights to:

- Identify issues and/or barriers regarding program or service delivery,
- Establish baseline data/information related to program performance and customer service,
- Provide potential solutions to barriers in program and/or service delivery,
- Identify serious issues that would merit a compliance or further review by the Office of Civil Rights.

*Description of Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local, or Tribal Government.

*Number of Respondents:* 1,300.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 221.

Emergency approval for this information collection has been requested by June 26, 1998.

### Food and Nutrition Service

*Title:* Annual Report of State Revenue Matching.

*OMB Control Number:* 0584–0075.

*Summary of Collection:* The National School Lunch Program, administered by

the Food and Nutrition Service (FNS), is mandated by the National School Lunch Act, 42 U.S.C. 1751 and the Child Nutrition Act of 1966, 42 U.S.C. 1771. Under the program, States are required to match 30 percent (or a lesser percent based on per capita income) of the Federal funds made available for the School Lunch Program. Annually, the State agencies are required to report to FNS, the total funds used in order to receive Federal reimbursement for meals served to eligible participants using form FNS–13.

*Need and Use of the Information:* The information collected allows FNS to monitor State compliance with the revenue matching requirement. Without this information, States may receive Federal funds which are not warranted. Monitoring the matching of State funds is essential to preventing fraud, waste, or abuse in the National School Lunch Program.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 57.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 4,560.

**National Agricultural Statistics Service**

*Title:* Cold Storage.

*OMB Control Number:* 0535–0001.

*Summary of Collection:* Providing information on national supplies of food in refrigerated storage facilities has been the responsibility of the Department of Agriculture since 1914. This service is the outcome of an investigation made by the Department in 1911, in response to allegations that food warehouses were being used by food speculators to ''corner-the-market'' and drive up prices paid by consumers. NASS will collect information using a biennial survey of refrigerated warehouses to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply.

*Need and Use of the Information:* NASS collects information from the Cold Storage Report that includes inventory statistics for approximately 100 food items held in public, private, and semi-private refrigerated warehouses. The stock figures in the Cold Storage Report are used by food processors, food brokers, and farmers in making production, marketing, and pricing decisions.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 3,195.

*Frequency of Responses:* Reporting: Monthly; Biannually; Other (8 times/years).

*Total Burden Hours:* 4,505.

**Farm Service Agency**

*Title:* Insured Farm Ownership Loan Policies, Procedures, and Authorizations.

*OMB Control Number:* 0560–0157.

*Summary of Collection:* The Consolidated Farm and Rural Development Act of 1972, authorizes the Secretary and the Farm Service Agency (FSA) to make direct farm ownership (FO) loans to eligible applicants who are unable to obtain commercial credit. The collection of information is needed to process applicant requests for FSA FO loans in a timely manner while maintaining the highest lending standards possible to protect the interests of the government. The purpose of FSA's direct FO program is to help family farmers become financially successful. FSA has various tools to assist family farmers including low interest rates, flexible repayment terms, and individualized credit supervision and counseling.

*Need and Use of the Information:* The collection of information is used by FSA employees to ensure that loans involving the purchase of real estate are properly documented and secured. This protects the interests of both the farm borrower and the Government.

*Description of Respondents:* Individuals or households; Farms.

*Number of Respondents:* 160.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 53.3.

**Food and Nutrition Service**

*Title:* Repayment Demand and Program Disqualification.

*OMB Control Number:* 0584–NEW.

*Summary of Collection:* In conjunction with the Food Stamp Act of 1977, the Food and Nutrition Service (FNS) implements regulations that provide requirements for food stamp household application, certification, and continued eligibility for food stamp benefits. Occasionally, FNS must initiate collection action for repayment of overissued benefits resulting from inadvertent household and State agency overissuances, and overissuances due to intentional program violations. Information is collected in these instances through the appropriate State agency to document the claim of overissuance and initiate repayment.

*Need and Use of the Information:* The information will be collected by State agency personnel from individuals collecting food stamp benefits. The State agencies must maintain all records associated with this collection for a period of three years so that FNS can review documentation during compliance reviews and other audits. Without approval of this information collection, FNS would not be able to correct accidental or fraudulent overpayment errors in the Food Stamp Program.

*Description of Respondents:* Individuals or households; State, Local, or Tribal Government.

*Number of Respondents:* 43,810.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 185,474.

**Rural Housing Service**

*Title:* 7 CFR 1806–A, ''Real Property Insurance''.

*OMB Control Number:* 0575–0087.

*Summary of Collection:* Rural Housing Service (RHS) Multi-Family Housing (MFH) program is administered under the provisions of the Housing Act of 1949 and Sections 303(c), and 321(b) of the consolidated Farm and Rural Development Act (CONTACT). This regulation is currently shared by the Farm Service Agency (FSA) and the MFH of the RHS. The regulation governs the servicing of property insurance on buildings and land securing and interest of RHS or FSA in connection with an FSA Farm Loan Program or RHS MFH loan. The information collected pertains to the verification of insurance on property securing Agency loans. The information required is submitted by FSA or RHS borrowers to agency offices. It is necessary to protect the government from losses due to weather, natural disasters, or fire and ensure that the Act's loan making requirements of hazards insurance are met by loan applicants.

*Need and Use of the Information:* RHS MFH collects information from borrowers documenting that they have sufficient insurance on their property that would repair or replace the valuable structures on the property should it be damaged. This protects the Government from losses due to weather, natural disasters or fire.

*Description of Respondents:* Individuals or households; Farms; Business or other for-profit.

*Number of Respondents:* 20,386.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 12,562.

**Nancy Sternberg,**

*Departmental Information Clearance Officer.*

[FR Doc. 98–17358 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. DA–98–06]**

### Milk in the New England and Other Marketing Areas; Determination of Equivalent Grade A Butter Price Series

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

**ACTION:** Determination of equivalent price series.

**SUMMARY:** This document announces that the Chicago Mercantile Exchange (CME) Grade AA Butter Spot Call for the month minus 9 cents is an equivalent butter price alternative for use in computing the butterfat differential and the Basic Formula Price (BFP) which are used to establish minimum class prices in all Federal milk marketing orders. The CME announced that trading of Grade A and Grade B butter in the Butter Spot Call contract will be suspended effective June 26, 1998. The CME Grade A butter price currently is used to establish milk prices under Federal orders. The establishment of an equivalent Grade A butter price series is essential to the continuing operation of the Federal order program.

**EFFECTIVE DATE:** June 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183, e-mail address nicholas—memoli@usda.gov.

**SUPPLEMENTARY INFORMATION:** This document provides an equivalent butter price series for calculation of the butterfat differential and the BFP which are used to derive milk prices in all Federal milk marketing orders (7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139). Currently, the CME Grade A butter price series is used to establish values for the butterfat differential and the BFP which are used to compute minimum class prices in all Federal milk marketing orders. The new butter price series is essential to the continuing operation of the Federal order program.

The final CME Grade A butter price will be announced on June 19, 1998, and this price will be used until June 25. However, a new equivalent price series needs to be effective June 26, 1998, to compute the butterfat differential and the BFP for the month of June and subsequent months. For the month of June, the butterfat differential and the BFP will be computed by using a simple average of the CME Grade A butter prices for the first 25 days (June 1 through June 25) and the CME Grade AA butter prices minus 9 cents for the last 5 days (June 26 to June 30). The June butterfat differential and BFP will be announced on July 2, 1998. Thereafter, on or before the 5th day of each month, a simple average of the CME Grade AA butter prices less 9 cents will be used to compute the butterfat differential and the BFP for the preceding month.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable provisions of the orders, as amended, regulating the handling of milk in the aforesaid marketing areas, it is hereby found and determined that:

(1) The CME announced that trading on Grade A and Grade B butter in the Butter Spot Call contract will be suspended effective June 26, 1998.

(2) The absolute level of the CME Grade A butter price is needed to determine the value of the butterfat differential and the month-to-month change in the price level is used in the product price formula update component of the BFP.

(3) Each order provides that if for any reason a price or pricing constituent required by the order for computing class prices or for other purposes is not available as prescribed in the order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

(4) The International Dairy Foods Association (IDFA) requested that the CME Grade AA Butter Spot Call for the month less 9 cents be used as an equivalent Grade A butter price. IDFA suggested that the equivalent butter price series become effective June 5, 1998, or as soon as possible. Agri-Mark Dairy Cooperative submitted a comment letter supporting IDFA's request and the recommended effective date. In addition, Michigan Milk Producers Association suggested that the CME Grade AA butter price less 9 cents or the formula (i.e., Grade AA butter price—.1342/.82) proposed by National Milk Producers Federation for Federal Order Reform be used as the equivalent butter price replacement.

(5) The CME Grade AA butter price for the month less 9 cents should be used as an equivalent price for the purposes of establishing minimum prices under all Federal orders. The new butter price series is expected to yield a price generally equal to the suspended price series. However, in regards to IDFA's suggested effective date, the proper exercise of the Department's authority would require that the Secretary issue an equivalent price determination with an effective date only after the June 26 suspension of Grade A butter trading on the CME.

(6) The final CME Grade A butter price will be announced on June 19, 1998, and that price will be applicable until June 25. Therefore, for the month of June, the butterfat differential and the BFP will be computed by using a simple average of the CME Grade A butter prices for the first 25 days (June 1 through June 25) and the CME Grade AA butter prices minus 9 cents for the last 5 days (June 26 to June 30). These prices will be announced on July 2, 1998. Thereafter, on or before the 5th of each month, the new equivalent price series will be used to compute the butterfat differential and the BFP for the preceding month.

(7) In conclusion, the Department has determined that the CME Grade AA Butter Spot Call for the month less 9 cents is an equivalent Grade A butter price for the purposes of computing the butterfat differential and the BFP which are used to establish milk prices under all Federal milk orders. The new equivalent butter price series will be effective June 26, 1998.

Dated: June 26, 1998.

**Authority:** 7 U.S.C. 601–674.

**Isi A. Siddiqui,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 98–17522 Filed 6–26–98; 2:24 pm]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### California Coast Province Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The California Coast Province Advisory Committee (PAC) will meet on July 16 and 17, 1998, at the Pt. Reyes National Seashore Administration Building Main Conference Room in Olema, CA. The meeting will be held from 9:00 a.m. to 5:00 p.m. July 16 and 8:30 a.m. to 5 p.m. July 17. The Pt. Reyes National Seashore Administration Building is located at #1 Bear Valley Road in Olema. Agenda items to be covered include: (1) Status of 2 PAC letters; (2) Status of Aquatic/Riparian Monitoring Team; (3) New National

Wildland Fire Policy as it relates to air quality; (4) Field trip at the Pt. Reyes National Seashore; (5) Subcommittee reports and recommendations (Coho, Public/Private/Tribal Partnership Opportunities, Work on the Ground, Recreation/Tourism, PAC/Scert, Monitoring); (6) Agencies' feedback on implementing the Coho Subcommittee roads resolution; (7) Joint 3 PAC meeting follow-up on priority action items identified at the May 28–29 PAC meeting; (8) PAC updates; and (9) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316.

Dated: June 22, 1998.

**Daniel K. Chisholm,**

*Forest Supervisor.*

[FR Doc. 98–17282 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Oregon PIEC Advisory Committee will meet on July 14, 1998 at the Diamond Lake Resort at Diamond Lake in Douglas County, Oregon.

The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. Agenda items to be covered include: (1) Review of committee operating guides; (2) a proposal for course woody material management; (3) Province Interagency Executive Committee action on the Advisory Committee's recommendation on issues to work on over the next year; (4) local issue presentation by Umpqua National Forest and Roseburg Bureau of Land Management; (5) Subcommittee reports; and (7) public comment. All Province Advisory Committee meetings are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541–858–2322.

Dated: June 22, 1998.

**Charles J. Anderson,**

*Acting Forest Supervisor, Designated Federal Official.*

[FR Doc. 98–17283 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

| Facility No., name, and location of stockyard | Date of posting |
|---|---|
| GA–153, Coosa Valley Livestock Market, Inc., Rome, Georgia. | May 20, 1959. |
| UT–117, Parker Sales, Logan, Utah. | June 18, 1992. |

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, DC, 22nd day of June 1998.

**Daniel L. Van Ackeren,**

*Director Office of Policy/Litigation Support Packers and Stockyards Programs.*

[FR Doc. 98–17350 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–EN–P

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Monday, Tuesday, and Wednesday, July 13–15, 1998 at the times and location noted below.

**DATES:** The schedule of events is as follows:

*Monday, July 13, 1998*

9:00 a.m.–Noon and 1:30–4:00 p.m. Committee of the Whole—Accessibility Guidelines (Closed Meeting).

*Tuesday, July 14, 1998*

9:30 a.m.–Noon Committee of the Whole—Accessibility Guidelines (Closed Meeting).

1:30–4:00 p.m. Committee of the Whole—Detectable Warnings and over-the-Road Buses, Final Rules (Closed Meeting).

*Wednesday, July 15, 1998*

9:00 a.m.–10:30 a.m. Planning and Budget Committee

10:30 a.m.–Noon Technical Programs Committee

1:30 p.m.–3:30 p.m. Board Meeting

**ADDRESSES:** The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

**SUPPLEMENTARY INFORMATION:** At the Board meeting, the Access Board will consider the following agenda items. Specific voting items are noted next to each committee report.

### Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the May 13, 1998 Board Meeting.
- Planning and Budget Committee Report—Fiscal Year 1998 Spending Plan Revision.
- Technical Programs Committee Report—Status Report on Fiscal Year 1997 and 1998 Research Projects, and Discussion of Research Objectives and Direction.

### Closed Meeting

- Committee of the Whole Reports—Accessibility Guidelines; Suspension of Requirements for Detectable Warnings, Final Rule; and Accessibility Requirements for Over-the-Road Buses, Final Rule.

All meetings are accessible to persons with disabilities. Sign language

interpreters and an assistive listening system are available at all meetings.

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 98–17303 Filed 6–29–98; 8:45 am]

BILLING CODE 8150–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Current Population Survey (CPS)—October 1998 School Enrollment Supplement.

*Form Number(s):* There are no forms. We conduct all interviewing on computers.

*Agency Approval Number:* 0607–0464.

*Type of Request:* Reinstatement, with change of an expired collection.

*Burden:* 4,000 hours.

*Number of Respondents:* 48,000.

*Avg Hours Per Response:* 5 minutes.

*Needs and Uses:* The Census Bureau is requesting clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 1998 CPS. The Bureau of the Census and the Bureau of Labor Statistics (BLS) sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 40 years.

This survey provides information on public/private elementary and secondary school enrollment, and characteristics of private school students and their families, which is used for tracking historical trends and for policy planning and support. This survey is the only source of national data on the age distribution and family characteristics of college students, and the only source of demographic data on preprimary school enrollment. As part of the Federal Government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in employment and progress in school.

The data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

This year, we are removing inquiries on computer usage and private school tuition which are only asked periodically. No other changes are proposed.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, U.S.C., Section 182; and Title 29, U.S.C., Sections 1–9.

*OMB Desk Officer:* Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 23, 1998.

**Madeleine Clayton,**

*Management Analyst, Office of Management and Organization.*

[FR Doc. 98–17286 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

*Bureau:* International Trade Administration.

*Title:* American Management and Business Internship Training (AMBIT) Program: Applications.

*Agency Form Number:* None.

*OMB Number:* 0625–0224.

*Type of Request:* Regular Submission.

*Burden:* 1,050 hours.

*Number of Respondents:* 450.

*Avg. Hours Per Response:* Range from 1 to 3 hours.

*Needs and Uses:* The U.S. Department of Commerce's International Trade Administration, in collaboration with the International Fund for Ireland (IFI), has established the American Management & Business Internship Training (AMBIT) program. AMBIT-participating U.S. firms provide one-to six-month training programs for managers and technical experts from Northern Ireland and the Border Counties of Ireland, thereby improving their skills while enhancing U.S. commercial opportunities in the region. AMBIT is one of several U.S. Government economic initiatives announced by President Clinton to demonstrate America's interest in supporting the economic development of Northern Ireland and the Six Border Counties of Ireland.

The U.S. Department of Commerce works in partnership with the IFI, and organization established in 1986 by the British and Irish Governments to promote economic/social progress and to encourage contact, dialog, and reconciliation in the region. The United States, the European Union, Canada, and New Zealand contribute to the IFI budget.

The applications are sent to U.S. companies and intern candidates via facsimile or mail upon request. Feedback surveys are given to participating companies and interns at the completion of the programs.

*Affected Public:* Businesses or other for-profit, not-for-profit institutions.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit, voluntary.

*OMB Desk Officer:* Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days to Victoria Beacher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1998.

**Madeleine Clayton,**

*Management Analyst, Office of Management and Organization.*

[FR Doc. 98–17395 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–DA–U

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Quarterly Financial Report

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 31, 1998.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Lee, Bureau of the Census, Room 1282–3, Washington, DC 20233, Telephone (301) 457–3343.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Quarterly Financial Report (QFR) Program is planning to submit for approval to the Office of Management and Budget (OMB) its four data collection forms: Quarterly Financial Report Forms QFR–101(MG)-long form, QFR–102(TR)-long form, and QFR–101A(MG)-short form, and QFR–103(NB)-Nature of Business Report. The current expiration for these forms is December 31, 1998.

The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. It is a principal economic indicator that also provides financial data essential to calculation of key Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires that financial statistics of business operations be collected and published quarterly. Public Law 103–105 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 1998. Efforts are underway to extend this authority. On May 13, 1998, Senator Fred Thompson (R-TN) introduced S. 2071, a bill that would extend the authority to conduct the QFR Program through September 30, 2005. Senator John Glenn (D-OH) is a co-sponsor of the legislation. We plan to submit a request for extension of the OMB approval of the QFR program reporting forms in anticipation of the enactment of this legislation.

The main purpose of the QFR is to provide timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. An extensive subscription mailing list attests to the diverse groups using these data including foreign countries, universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations. The primary users are governmental organizations charged with economic policy-making responsibilities. These organizations play a major role in providing guidance, advice, and support to the QFR Program.

## II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 25 days of the end of the quarter for which the data are being requested. Letters and/or telephone calls encouraging participation will be directed to respondents who have not responded by the designated time.

## III. Data

*OMB Number:* 0607–0432.

*Form Number:* QFR–101 (Sent quarterly to manufacturing, mining, and wholesale trade corporations with assets of $50 million or more at time of sampling), QFR–102 (Sent quarterly to retail trade corporations with assets of $50 million or more at time of sampling), QFR–101A (Sent quarterly to manufacturing corporations with assets of less than $50 million at time of sampling), and QFR–103 (Sent at the beginning of sample selection and at 2-year intervals if the corporation is included in the sample for more than eight quarters)

*Type of Review:* Regular Review.

*Affected Public:* Manufacturing corporations with assets of $250 thousand or more and mining and wholesale and retail trade corporations with assets of $50 million or more.

*Estimated Number of Respondents:*

Form QFR–101—3,475 per quarter, 13,900 annually

Form QFR–102—575 per quarter, 2,300 annually

Form QFR–101A—4,500 per quarter, 18,000 annually

Form QFR–103—1,225 per quarter 4,900 annually.

*Estimated Time Per Response:* The average for all respondents is about 2.1 hours. For companies completing Form QFR–101 or QFR–102, the range is from less than 1 to 10 hours, averaging 2.9 hours. For companies completing Form QFR-101A, the range is less than 1 hour to 3 hours, averaging 1.2 hours. For companies completing Form QFR–103, the range is from 1 to 4 hours, averaging 2.4 hours.

*Estimated Total Annual Burden Hours:* The total annual burden for fiscal years 1999 and 2000 is estimated to be 80,340 hours.

*Estimated Total Annual Cost:* The cost to all respondents for their time to respond is estimated to be $1,063,742. This cost is calculated by multiplying the annual burden hours (80,340) by the Bureau of Labor Statistics' 1996 estimate ($523 for a 39.5 hour work week) for a private industry entry level accountant.

*Respondents' Obligation:* Mandatory.

*Legal Authority:* Title 13 United States Code, Sections 91 and 224.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 24, 1998.

**Madeleine Clayton,**

*Management Analyst, Office of Management and Organization.*

[FR Doc. 98–17285 Filed 6–29–98; 8:45 a.m.]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 88–8A016.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Wood Machinery Manufacturers of America (''WMMA'') on February 3, 1989. The Notice of issuance of the

original Certificate was published in the **Federal Register** on February 9, 1989 (54 FR 6312).

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Amended Certificate

Export Trade Certificate of Review No. 88–80016, was originally issued to WMMA on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); December 13, 1993 (58 FR 66344, December 20, 1993); August 23, 1994 (59 FR 44408, August 29, 1994); September 20, 1996 (61 FR 50471, September 26, 1996); and June 20, 1997 (62 FR 34440, June 26, 1997).

WMMA's Export Trade Certificate of Review has been amended to:

1. Add as a new ''Member'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Terrco, Inc., Waterloo, South Dakota; and

2. Delete L.R.H. Enterprises, Inc. and Wood-Mizer Products as ''Members'' of the Certificate.

Effective Date: March 10, 1998.

Dated: June 24, 1998

**Morton Schnabel,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 98–17337 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 062298D]**

### Marine Mammals; File No. P368F

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

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Dr. James T. Harvey, Associate Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss landing, CA 95039–0450, has requested an amendment to scientific research Permit No. 974 (File No. P368F).

**DATES:** Written or telefaxed comments must be received on or before July 30, 1998.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–4045).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Sara Shapiro or Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 974, issued on August 29, 1995 (60 FR 46577) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 974 authorizes the permit holder to: determine body fat of harbor seals (*Phoca vitulina*); handle 20 harbor seal pups up to four times and 80 pups one time annually to track changes in health, physiological condition, and diving behavior; handle 20 adults and 20 juveniles four times annually to determine seasonal shifts in health, physiological condition, and diving behavior; and harass 600 harbor seals as a result of the above activities. The permit holder requests authorization to: increase the number of accidental mortalities from 2 to 15 to compensate for the effects of El Nino on pup condition, and increase total number of takes of adults and subadults.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 23, 1998.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 98–17339 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 062498D]**

### Marine Mammals; Permit No. 926

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

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Dr. Robin W. Baird, Dalhousie University, Halifax, Nova Scotia, B3H 4J1, Canada, has requested an amendment to scientific research Permit No. 959.

**DATES:** Written comments must be received on or before July 30, 1998.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA (206/526–6150);

Regional Administrator, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Drevenak, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authorized to (1) radio tag via suction cup attachment up to 50 killer whales (*Orcinus orca*) and up to 100 Dall's porpoise (*Phocoenoides dalli*) annually in the waters of Washington, Southeast Alaska, Oregon, and California over a 5-year period.

The Holder is now requesting that the Permit be amended to authorize the suction-cup TDR/VHF tagging of the following additional species of cetaceans: Baird's beaked whales (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), sperm whales (*Physeter macrocephalus*), northern right whale dolphins (*Lissodelphis borealis*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Risso's dolphins (*Grampus griseus*), short-finned pilot whales (*Globicephala macrorhynchus*), false killer whales (*Pseudorca crassidens*), minke whales (*Balaenoptera acutorostrata*), and gray whales (*Eschrichtius robustus*).

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 24, 1998.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 98–17392 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 062298B]**

### Marine Mammals; File No. 758–1459

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000, has applied in due form for a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before July 30, 1998.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Sara Shapiro or Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant seeks to determine liver enzyme activity from up to six fresh, northern fur seal pup carcasses or stillbirth fetuses. In the event that no fresh carcasses are available, the application wishes to euthanize up to six moribund/mortally injured seals. If an animal has any chance of survival if left on its own, or could survive through rehabilitation, then euthanasia would not be administered.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 24, 1998.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 98–17393 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 223, Environment, Conservation, and Occupational Safety, and Related Clauses at 252.223; OMB Number 0704–0272.

*Type of Request:* Revision.

*Number of Respondents:* 2,856.

*Responses Per Respondent:* 12.56.

*Annual Responses:* 35,873.

*Average Burden Per Response:* 0.81 hours.

*Annual Burden Hours:* 28,964.

*Needs and Uses:* This information collection requirement consolidates the requirements previously covered by OMB Control Numbers 0704–0272, 0704–0343, and 0704–0385, and also transfers requirements relating to Part 223 from OMB Control Number 0704–0187. This information collection requirement pertains to information that an offeror/contractor must submit to the Department of Defense (DoD) in response to solicitation provisions and contract clauses in DFARS 252.223. The information is used by DoD contracting officers to: (1) Verify compliance with requirements for labeling of hazardous material; (2) ensure compliance of contractors with DoD 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, and minimize risk of future mishaps; (3) monitor subcontractor compliance with DoD 4145.26–M; (4) verify that the contractor has the financial capability to reimburse the Government for any liabilities incurred by the Government as a result of the contractor's negligence or breach of contract; and, (5) monitor subcontractor compliance with DoD 5100.76–M, Physical Security of Sensitive Conventional Arms.

*Affected Public:* Business or Other For-Profit; Not-For Profit Institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 25, 1998.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98–17317 Filed 6–29–98; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 98–43]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Assistance Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–43, with attached transmittal, policy justification and sensitivity of technology.

Dated: June 25, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

11 JUN 1998
In reply refer to:
I-67832/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-43, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $73 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

**Transmittal No. 98-43**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

(i) **Prospective Purchaser:** Israel

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $ 24 million |
| Other | $ 49 million |
| TOTAL | $ 73 million |

(iii) **Description of Articles or Services Offered:** PATRIOT Missile System equipment including three AN/MPQ-53 radar sets, three AN/MSQ-104 engagement control stations, three M983 tractors, nine M931A2 trucks, Government Furnished Equipment, trailers, information coordination central, transporters, modification kits, generators, shop and tool equipment, spare and repair parts, support and test equipment, personnel training and training equipment, Quality Assurance Team, technical support, and other related elements of logistics support.

(iv) **Military Department:** Army (YRA)

(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:** 11 JUN 1998

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Israel - PATRIOT Missile System Equipment

The Government of Israel has requested a possible sale of PATRIOT Missile System equipment including three AN/MPQ-53 radar sets, three AN/MSQ-104 engagement control stations, three M983 tractors, nine M931A2 trucks, Government Furnished Equipment, trailers, information coordination central, transporters, modification kits, generators, shop and tool equipment, spare and repair parts, support and test equipment, personnel training and training equipment, Quality Assurance Team, technical support, and other related elements of logistics support. The estimated cost is $73 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel needs this surface-to-air equipment to continue the upgrade of its air defense capabilities and will have no difficulty absorbing these additional equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Electronic Systems, Bedford, Massachusetts. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale may require a Quality Assurance Team in-country periodically as the program proceeds.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 98-43**

**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 PATRIOT Air Defense Weapon System and the AN/MPQ-53 semi-trailer mounted radar set are the classified and sensitive elements of the PATRIOT Missile System. The highest level of classified information required to be released for training, operation, and maintenance of the PATRIOT missiles system is Secret. The highest level which could be revealed through reverse engineering or testing of the end item is Secret. This information includes Confidential and Secret reports and test data, as well as performance and capability data classified Confidential/Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems 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.

[FR Doc. 98–17315 Filed 6–29–98; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.
**ACTION:** Altering a record system.

**SUMMARY:** The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The alteration will be effective on July 27, 1998, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on June 17, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: June 25, 1998.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N05520–4**

**SYSTEM NAME:**

NCIS Investigative Files System *(February 22, 1993, 58 FR 10762).*

**CHANGES:**

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'Persons in the following categories who require access to classified defense information and others who are of criminal, counterintelligence, security or general investigative interest to NCIS:

Active, reserve, and inactive members of the naval service; civilians, to include applicants for employment with NCIS; both citizen and alien employees located in both the U.S. and in overseas areas and including temporary, part-time, and advisory personnel employed by the Department of the Navy; industrial and contractor personnel; civilian personnel being considered for sensitive positions, boards, conferences, etc. Civilian personnel who worked or resided overseas, e.g., Red Cross personnel. Civilian and military personnel accused, suspected, a witness to, or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the Department of the Navy; civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a Department of the Navy installation, facility or ship; civilians and civilian or military personnel who are subjects, co-subjects, witnesses, and victims in law enforcement and investigative cases in which law enforcement and investigative authorities (Federal, state, and local) have requested laboratory analysis of submitted evidence for law enforcement purposes; civilians and civilian, contract and military personnel upon whom evidence is stored at a Consolidated Evidence Facility; civilian, contract, or military personnel involved in the loss, compromise, or unauthorized disclosure of classified material/information; civilians, contract, and civilian and military personnel who were/are of counterintelligence interest to the Department of the Navy. Persons under investigation and parties to the conversation whose conversations have been intercepted during wire, electronic and oral surveillance operations conducted by or on behalf of NCIS.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Official investigative reports prepared by NCIS or other Federal, state, local or foreign law enforcement or investigative body. NCIS information reports (NIRs) and their predecessor NCIS operations reports (NORs) and their predecessor NCIS Reports of Investigations (ROI). NCIS NIRS, ROIs, and other similar documents and NIRs document information received by NCIS which is of interest to the naval services or other law enforcement or investigative bodies. The Counterintelligence Directorate still uses the ROI format to document its investigative activities. Requests for, documentation pertaining to, results of wire, electronic and oral intercepts; polygraph examinations and summaries; physical surveillances; mail cover or search; and other law enforcement and counterintelligence investigative methods. Also may contain biographic data, intelligence/counterintelligence debriefing reports, information concerning U.S. personnel who are missing, captured, or detained by a hostile entity. The information may be of criminal, counterintelligence, or general investigative interest.

Action Lead Sheets, investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

*Polygraph Data.* A listing of persons who submitted to polygraph examination by NCIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner. Also, copies of examination records created in support of criminal investigations. This data includes statistical and technical data sheets, questions sheets, charts, numerical evaluation forms, subject statements, consent forms, medical waivers, interview logs, personal data sheets, and related documents.

Case Control and Management documents which serve as the basis for recording, conducting, controlling, and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by 'Name Only'.

*Regional Laboratory Report Records.* Records reporting and documenting laboratory analysis of submitted evidence.

*Consolidated Evidence Inventory Records.* Reporting and documenting evidence analyzed, stowed, transferred, or destroyed.Wire, Electronic, and Oral Interceptions Index Records. Listing of persons who were subjects of wire, electronic, or oral communications intercept operations. The data includes the name of the person who is the subject of the surveillance and citizenship; Social Security Number; and date/place of birth, if known; to the extent known names of each identifiable person whose communications were intercepted; telephone numbers or radio call signs involved; case number; address of location of each interception; activity maintaining the case file; and date or dates of the interceptions.

*Case Control and Narcotics Data Records.* Automated records used only for statistical purposes in accounting for productivity, manhour expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

*Screening Board Reports.* These reports set forth the results of oral

examination of applicants for a position as a Special Agent with NCIS.

*Personnel Security Investigations.* Requests for and results of investigations or inquiries conducted by U.S. Navy or other Department of Defense, Federal, state, or local investigative agency. Record includes: personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; requests for and National Agency checks; local agency checks; military records; birth records; employment records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; etc.'

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 18 U.S.C. 2510-2520 and 3504; 44 U.S.C. 3101; 47 U.S.C. 605; Executive Memorandum of June 26, 1939, Investigations of Espionage, Counterespionage and Sabotage Matters; DoD Regulation 5200.2-R, Personnel Security Program Regulation; DoD Directive 5200.26, Defense Investigative Program; DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense; DoD Directive 5210.48, DoD Polygraph Program; DoD Regulation 5240.1-R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; DoD Directive 5505.9, Interception of Wire, Electronic, and Oral Communications for Law Enforcement; Secretary of the Navy Instruction 3820.2D, Investigative and Counterintelligence Collection and Retention Guidelines Pertaining to the Department of the Navy; Secretary of the Navy Instruction 5520.3B, Criminal and Security Investigations and Related Activities Within the Department of the Navy; Secretary of the Navy Instruction 5520.4B, Department of the Navy Polygraph Program; OPNAV Instruction 5510.1H, Department of the Navy Information and Personnel Security Program Regulation; E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; and E.O. 12333, United States Intelligence Activities.'

**PURPOSE(S):**

Delete entry and replace with 'The information in this system is (was) collected to meet the investigative, counterintelligence, and security responsibilities of the Department of the Navy. This includes personal, personnel security, internal security, criminal, and other law enforcement matters all of which are essential to the effective operation of the Department of the Navy.

The records in this system are used for the following purposes: Suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to assist Federal, state and local agencies that perform law enforcement or quasi-law enforcement functions; to assist Federal, state and local agencies that perform victim/witness assistance services, child protection services or family support or sailor services; insurance claims including workmen's compensation; provide protective operations under the DoD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; assist local law enforcement agencies in meeting their responsibilities for complying with Congressionally mandated records checks such as Brady Handgun Violence Prevention Act checks; used for public affairs or publicity purposes such as wanted persons announcements, etc; referral of matters under their cognizance to federal, state or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; advising higher authorities and naval commands of the important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; input into the Defense Security Service managed Defense Clearance and Investigations Index (DCII) database under system notice V5-02. Wire, Electronic, and Oral Interceptions Index is maintained to enable NCIS to quickly locate records of intercept activities in response to motions for discovery and inquiries.

Users of the records in this system include NCIS employees who require access for operational, administrative, or supervisory purposes; DoD criminal investigative and intelligence units; DoD components making suitability determinations.'

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete paragraphs one, three, and five, and add the following three paragraphs 'To the Immigration and Naturalization Service, Department of Justice, for use in alien admission and naturalization inquiries conducted under Section 105 of the Immigration and Naturalization Act of 1952, as amended.

To the Department of Veterans Affairs for use in benefit determinations.

To the White House for the purpose of personnel actions requiring approval of the President of the United States as provided for in DoD Instruction 1320.4.'

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with 'NCIS closed case paper files are filed by numeric sequential number, alphabetic by topical title, and geographic location; microfilm files are filed by dossier number; and electronic/optically imaged files by case control and Social Security Number. In order to locate the file it is necessary to query the Defense Clearance and Investigations Index using the name of the subject and at least one other personal identifier such as date of birth, place of birth, or Social Security Number. Polygraph electronic systems also use the polygraph approval number. Open case files may also be retrieved from NCIS automated systems by a control number assigned at the time the investigation is initiated.

Copies of the files in the Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are retrieved by name. Polygraph sites can also retrieve copies of the file by polygraph approval number.

Consolidated Evidence Facility and Regional Forensic Lab information is retrieved by name, case control number, submitting agency log number, log numbers, or lab numbers. Wire, Electronic, and Oral Intercept Index records are retrieved by a combination of name, address, Social Security Number, telephone number/radio call sign, or case designation.'

**SAFEGUARDS:**

Delete entry and replace with 'Buildings employ alarms, security guards, and or rooms with security controlled areas accessible only to authorized persons. Classified and highly sensitive paper records are maintained in General Service Administrative approved security containers. Paper and microform records in NCIS records office are stored

in open shelves and filing cabinets in security controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Noncurrent and master copy of microfilmed files are retired to the Washington National Records Center where retrieval is restricted to NCIS authorized personnel.'

**RETENTION AND DISPOSAL:**

Delete entry and replace with '*Counterintelligence (CI) Records:*

CI records are retained in the active file until the case is closed; then destroyed 25 years after the date of last action. Major CI investigations are retired to the NCIS records office upon case closure; then transferred to the National Archives and Records Administration (NARA) when 25 years old.

Source records are retained in the active file until the operation is complete; then destroyed 75 years after the date of the last action.

Reciprocal CI investigative files regarding individuals or organizations under investigative jurisdiction of the requesting agency are disposed of as prescribed above for CI investigative records; except when the request is for CI personnel security matters; then the file is destroyed after one year.

CI defensive briefings are retained until case closure, retired to the NCIS records office; then destroyed after 15 years.Foreign national marriage and visa applicant investigations are retired to the NCIS records office upon case closure; then destroyed after one year except when the investigation surfaces significant derogatory material. These files are destroyed after five years.

Records pertaining to CI polygraph examinations conducted in support of CI activities are filed with the case file and disposed of in accordance with the guidance for the associated file. CI Security Polygraph Program (CSP) records are maintained in the active file until no longer needed; then disposed of after the final quality control review as follows: (1) CSP cases favorably resolved are destroyed after the final quality assurance review, except at NCIS Polygraph Units which retain the CSP investigative reports only; destroying it when no longer needed or after one year (2) CSP cases other than favorably resolved are destroyed 25 years after completion of the final quality assurance review, except when an existing criminal investigation exists. In such cases the CSP Package is incorporated into the investigative file and disposed of in accordance with the disposition guidance for the dossier (3) audio tape recordings of routine CSP examinations with no significant responses are erased when no longer needed or after 90 days. Recordings referred for further investigation are incorporated into the investigative case file and disposed of in accordance with the disposition guidance for the dossier.

*Personnel investigations:*

Completed NCIS investigative files on Personnel Security Investigations (PSI's) are destroyed after 15 years unless significant incidents or adverse information is developed, in which case they are destroyed after 25 years. PSI files on persons considered for affiliation with DoD will be destroyed within one year if the affiliation is not consummated.

Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Non-DoD-affiliated applicant records are destroyed when no longer needed or after 90 days. Records for applicants who are accepted are retired to NCIS records office upon case closure; then destroyed 10 years after release, separation, transfer, retirement, or resignation.

Internal personnel inquiries records are retired to NCIS records office after case closure; then destroyed 25 years after the date of last action or 10 years after termination of employment, whichever is later.

Limited inquiries records are retired to NCIS records office at inquiry closure; then destroyed after 5 years.

Support applicant records are retired to NCIS records office at case closure; then destroyed after 15 years.

*Law Enforcement Records:*

Criminal investigative files are destroyed after 25 years, except (1) controlled death investigations which are destroyed 75 years after date of case closure (2) files of cases determined to be of historical value are transferred to NARA 25 years after the date of the last action, except Grand Jury material which is destroyed at the time of transfer.

Incident Complaint Reports (ICR) received from Navy Shore Patrol and Marine Corps military police offices pertaining to categories of investigations/reports under the jurisdiction of NCIS are destroyed when 25 years old. Cases referred but determined not under NCIS jurisdiction are destroyed when no longer needed.

Criminal intelligence operations files are retired to NCIS records office upon closure; then destroyed 15 years after closure for Group 1 records and five years for Group 2.

Protective operations files involving protective details of distinguished persons are destroyed when five years old, except records where a threat or attempted threat materialized are destroyed when 25 years old.

Law enforcement source (also called 'cooperating witness') records are retired to NCIS records office after case closure and destroyed 15 years after the date of last action.

Information reports consisting of incidental information impacting on the security or discipline of commands or of interest to other law enforcement elements are destroyed when 25 years old.

Reciprocal investigative files regarding requests for investigative assistance from other Federal, state and local law enforcement agencies are disposed of as prescribed for the criminal investigative reports and ICRs, as appropriate.

Polygraph examinations conducted for criminal investigations are quality assured and filed in the associated criminal investigation. Disposition is in accordance with the guidance for the investigative case file.

Wire, Electronic, Oral Interception Index computer entries are deleted upon destruction or transfer to NARA of the case file containing intercept information. Disposition of the case files is governed by the NARA approved retention period applied to the case dossier. Hardcopy records used to create the index are destroyed upon verification that the indexing information has been fully and accurately entered into the automated index.

National Crime Information Center (NCIC) records that support Department of the Navy entries into the FBI's National Crime Information Center are destroyed after the related entry is deleted from the National Crime Information Center computer. Microfiche copies are destroyed when all cases on the fiche are cleared from the National Crime Information Center.

*Laboratory fingerprint card files are disposed of as follows:*

(1) one fingerprint card set is forwarded to the Federal Bureau of Investigation; the other set is destroyed when 75 years old

(2) fingerprint card indices and related correspondence are destroyed when all administrative needs have expired.

Counterintelligence records on persons not affiliated with DoD must be destroyed within 90 days or one year

under criteria set forth in DoD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy.

Files retained in the Naval Criminal Investigative Service Field Offices and Naval Criminal Investigative Service Resident Agencies and Polygraph sites are temporary and are destroyed after 90 days or one year, as appropriate.

Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records; and magnetic erasing for computerized records. Optical digital data and CD ROM records are destroyed as specified by NAVSO P-5239-26, 'Remanence Security Guidebook' of September 1993.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with 'From individual, DoD and Military Department records; Federal Agency records; foreign law enforcement agencies, security, intelligence, investigatory, or administrative authorities; state, county, and municipal records; employment records of public schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus; financial institutions which maintain credit information on individuals such as loan and mortgage companies, credit unions, banks, etc.; transportation companies (airlines, railroad, etc.); other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: telephone directories, city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What, a listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and the U.S. Navy BIDEX (Biographical Index); any other type of miscellaneous records deemed necessary to complete the investigation or inquiry; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses, victims, confidential sources, and or other individuals deemed necessary to complete the investigation.'

* * * * *

**N05520–4**

**SYSTEM NAME:**

NCIS Investigative Files System.

**SYSTEM LOCATION:**

Primary System: Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380.

Decentralized Segments - Located at the Naval Criminal Investigative Service (NCIS) Field Offices (FO), Resident Agencies (RA), and Polygraph sites worldwide. Naval Criminal Investigative Service Regional Offices retain copies of certain portions of some investigative files and related documentation for up to one year. The number and location of these Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are subject to change in order to meet the requirements of the Department of the Navy.

Naval Criminal Investigative Service Regional Forensic Laboratories retain records of lab analysis of evidence submitted for law enforcement purposes.

Consolidated Evidence Facilities maintain evidence inventory records.

Current locations of NCIS decentralized segments may be obtained from the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons in the following categories who require access to classified defense information and others who are of criminal, counterintelligence, security or general investigative interest to NCIS:

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Official investigative reports prepared by NCIS or other Federal, state, local or foreign law enforcement or investigative body. NCIS information reports (NIRs) and their predecessor NCIS operations reports (NORs) and their predecessor NCIS Reports of Investigations (ROI). NCIS NIRS, ROIs, and other similar documents and NIRs document information received by NCIS which is of interest to the naval services or other law enforcement or investigative bodies. The Counterintelligence Directorate still uses the ROI format to document its investigative activities. Requests for, documentation pertaining to, results of wire, electronic and oral intercepts; polygraph examinations and summaries; physical surveillances; mail cover or search; and other law enforcement and counterintelligence investigative methods. Also may contain biographic data, intelligence/counterintelligence debriefing reports, information concerning U.S. personnel who are missing, captured, or detained by a hostile entity. The information may be of criminal, counterintelligence, or general investigative interest.

Action Lead Sheets, investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

*Polygraph Data.* A listing of persons who submitted to polygraph examination by NCIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner. Also, copies of examination records created in support of criminal investigations. This data includes statistical and technical data sheets, questions sheets, charts, numerical evaluation forms, subject statements, consent forms, medical waivers, interview logs, personal data sheets, and related documents.

Case Control and Management documents which serve as the basis for recording, conducting, controlling, and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by 'Name Only'.

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*Consolidated Evidence Inventory Records.* Reporting and documenting evidence analyzed, stowed, transferred, or destroyed.Wire, Electronic, and Oral Interceptions Index Records. Listing of persons who were subjects of wire, electronic, or oral communications intercept operations. The data includes the name of the person who is the subject of the surveillance and citizenship; Social Security Number; and date/place of birth, if known; to the extent known names of each identifiable person whose communications were intercepted; telephone numbers or radio call signs involved; case number; address of location of each interception; activity maintaining the case file; and date or dates of the interceptions.

*Case Control and Narcotics Data Records.* Automated records used only for statistical purposes in accounting for productivity, manhour expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

*Screening Board Reports.* These reports set forth the results of oral examination of applicants for a position as a Special Agent with NCIS.

*Personnel Security Investigations.* Requests for and results of investigations or inquiries conducted by U.S. Navy or other Department of Defense (DoD), Federal, state, or local investigative agency. Record includes: personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; requests for and National Agency checks; local agency checks; military records; birth records; employment records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; etc.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 18 U.S.C. 2510-2520 and 3504; 44 U.S.C. 3101; 47 U.S.C. 605; Executive Memorandum of June 26, 1939, Investigations of Espionage, Counterespionage and Sabotage Matters; DoD Regulation 5200.2-R, Personnel Security Program Regulation; DoD Directive 5200.26, Defense Investigative Program; DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense; DoD Directive 5210.48, DoD Polygraph Program; DoD Regulation 5240.1-R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; DoD Directive 5505.9, Interception of Wire, Electronic, and Oral Communications for Law Enforcement; Secretary of the Navy Instruction 3820.2D, Investigative and Counterintelligence Collection and Retention Guidelines Pertaining to the Department of the Navy; Secretary of the Navy Instruction 5520.3B, Criminal and Security Investigations and Related Activities Within the Department of the Navy; Secretary of the Navy Instruction 5520.4B, Department of the Navy Polygraph Program; OPNAV Instruction 5510.1H, Department of the Navy Information and Personnel Security Program Regulation; E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; and E.O. 12333, United States Intelligence Activities.

**PURPOSE(S):**

The information in this system is (was) collected to meet the investigative, counterintelligence, and security responsibilities of the Department of the Navy. This includes personal, personnel security, internal security, criminal, and other law enforcement matters all of which are essential to the effective operation of the Department of the Navy.

The records in this system are used for the following purposes: Suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to assist Federal, state and local agencies that perform law enforcement or quasi-law enforcement functions; to assist Federal, state and local agencies that perform victim/witness assistance services, child protection services or family support or sailor services; insurance claims including workmen's compensation; provide protective operations under the DoD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; assist local law enforcement agencies in meeting their responsibilities for complying with Congressionally mandated records checks such as Brady Handgun Violence Prevention Act checks; used for public affairs or publicity purposes such as wanted persons announcements, etc; referral of matters under their cognizance to federal, state or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; advising higher authorities and naval commands of the important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; input into the Defense Security Service managed Defense Clearance and Investigations Index (DCII) database under system notice V5-02. Wire, Electronic, and Oral Interceptions Index is maintained to enable NCIS to quickly locate records of intercept activities in response to motions for discovery and inquiries.

Users of the records in this system include NCIS employees who require access for operational, administrative, or supervisory purposes; DoD criminal investigative and intelligence units; DoD components making suitability determinations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To federal intelligence agencies for matters under their purview.

To other investigative units (federal, state, or local) for whom the investigation was conducted, or who are engaged in regulatory, criminal investigative and intelligence activities; to defense counsel in the course of acquiring information.

To commercial insurance companies in those instances in which they have a legitimate interest in the results of the investigation, but only to that extent and provided an unwarranted invasion of privacy is not involved.

To victims of crimes to the extent necessary to pursue civil and criminal remedies.

To the Immigration and Naturalization Service, Department of Justice, for use in alien admission and naturalization inquiries conducted

under Section 105 of the Immigration and Naturalization Act of 1952, as amended.

To the Department of Veterans Affairs for use in benefit determinations.

To the White House for the purpose of personnel actions requiring approval of the President of the United States as provided for in DoD Instruction 1320.4.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:**

**STORAGE:**

Maintained on paper records in file folders, audio and audiovisual tapes, microimaging, electronic systems, magnetic tape, optical digital data disks, CD ROM, and computer output products. Some laboratory documents are stored in loose-leaf notebooks or bound record books.

**RETRIEVABILITY:**

NCIS closed case paper files are filed by numeric sequential number, alphabetic by topical title, and geographic location; microfilm files are filed by dossier number; and electronic/optically imaged files by case control and Social Security Number. In order to locate the file it is necessary to query the Defense Clearance and Investigations Index using the name of the subject and at least one other personal identifier such as date of birth, place of birth, or Social Security Number. Polygraph electronic systems also use the polygraph approval number. Open case files may also be retrieved from NCIS automated systems by a control number assigned at the time the investigation is initiated.

Copies of the files in the Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are retrieved by name. Polygraph sites can also retrieve copies of the file by polygraph approval number. Consolidated Evidence Facility and Regional Forensic Lab information is retrieved by name, case control number, submitting agency log number, log numbers, or lab numbers. Wire, Electronic, and Oral Intercept Index records are retrieved by a combination of name, address, Social Security Number, telephone number/radio call sign, or case designation.

**SAFEGUARDS:**

Buildings employ alarms, security guards, and or rooms with security controlled areas accessible only to authorized persons. Classified and highly sensitive paper records are maintained in General Service Administrative approved security containers. Paper and microform records in NCIS records office are stored in open shelves and filing cabinets in security controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Noncurrent and master copy of microfilmed files are retired to the Washington National Records Center where retrieval is restricted to NCIS authorized personnel.

**RETENTION AND DISPOSAL:**

*Counterintelligence (CI) Records:*

CI records are retained in the active file until the case is closed; then destroyed 25 years after the date of last action. Major CI investigations are retired to the NCIS records office upon case closure; then transferred to the National Archives and Records Administration (NARA) when 25 years old.

Source records are retained in the active file until the operation is complete; then destroyed 75 years after the date of the last action.

Reciprocal CI investigative files regarding individuals or organizations under investigative jurisdiction of the requesting agency are disposed of as prescribed above for CI investigative records; except when the request is for CI personnel security matters; then the file is destroyed after one year.

CI defensive briefings are retained until case closure, retired to the NCIS records office; then destroyed after 15 years.Foreign national marriage and visa applicant investigations are retired to the NCIS records office upon case closure; then destroyed after one year except when the investigation surfaces significant derogatory material. These files are destroyed after five years.

Records pertaining to CI polygraph examinations conducted in support of CI activities are filed with the case file and disposed of in accordance with the guidance for the associated file. CI Security Polygraph Program (CSP) records are maintained in the active file until no longer needed; then disposed of after the final quality control review as follows: (1) CSP cases favorably resolved are destroyed after the final quality assurance review, except at NCIS Polygraph Units which retain the CSP investigative reports only; destroying it when no longer needed or after one year (2) CSP cases other than favorably resolved are destroyed 25 years after completion of the final quality assurance review, except when an existing criminal investigation exists. In such cases the CSP Package is incorporated into the investigative file and disposed of in accordance with the disposition guidance for the dossier (3) audio tape recordings of routine CSP examinations with no significant responses are erased when no longer needed or after 90 days. Recordings referred for further investigation are incorporated into the investigative case file and disposed of in accordance with the disposition guidance for the dossier.

*Personnel investigations:*

Completed NCIS investigative files on Personnel Security Investigations (PSI's) are destroyed after 15 years unless significant incidents or adverse information is developed, in which case they are destroyed after 25 years. PSI files on persons considered for affiliation with DoD will be destroyed within one year if the affiliation is not consummated.

Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Non-DoD-affiliated applicant records are destroyed when no longer needed or after 90 days. Records for applicants who are accepted are retired to NCIS records office upon case closure; then destroyed 10 years after release, separation, transfer, retirement, or resignation.

Internal personnel inquiries records are retired to NCIS records office after case closure; then destroyed 25 years after the date of last action or 10 years after termination of employment, whichever is later.

Limited inquiries records are retired to NCIS records office at inquiry closure; then destroyed after 5 years.

Support applicant records are retired to NCIS records office at case closure; then destroyed after 15 years.

*Law Enforcement Records:*

Criminal investigative files are destroyed after 25 years, except (1) controlled death investigations which are destroyed 75 years after date of case closure (2) files of cases determined to be of historical value are transferred to NARA 25 years after the date of the last action, except Grand Jury material which is destroyed at the time of transfer.

Incident Complaint Reports (ICR) received from Navy Shore Patrol and Marine Corps military police offices pertaining to categories of investigations/reports under the jurisdiction of NCIS are destroyed when

25 years old. Cases referred but determined not under NCIS jurisdiction are destroyed when no longer needed.

Criminal intelligence operations files are retired to NCIS records office upon closure; then destroyed 15 years after closure for Group 1 records and five years for Group 2.

Protective operations files involving protective details of distinguished persons are destroyed when five years old, except records where a threat or attempted threat materialized are destroyed when 25 years old.

Law enforcement source (also called 'cooperating witness') records are retired to NCIS records office after case closure and destroyed 15 years after the date of last action.

Information reports consisting of incidental information impacting on the security or discipline of commands or of interest to other law enforcement elements are destroyed when 25 years old.

Reciprocal investigative files regarding requests for investigative assistance from other Federal, state and local law enforcement agencies are disposed of as prescribed for the criminal investigative reports and ICRs, as appropriate.

Polygraph examinations conducted for criminal investigations are quality assured and filed in the associated criminal investigation. Disposition is in accordance with the guidance for the investigative case file.

Wire, Electronic, Oral Interception Index computer entries are deleted upon destruction or transfer to NARA of the case file containing intercept information. Disposition of the case files is governed by the NARA approved retention period applied to the case dossier. Hardcopy records used to create the index are destroyed upon verification that the indexing information has been fully and accurately entered into the automated index.

National Crime Information Center (NCIC) records that support Department of the Navy entries into the FBI's National Crime Information Center are destroyed after the related entry is deleted from the National Crime Information Center computer. Microfiche copies are destroyed when all cases on the fiche are cleared from the National Crime Information Center.

*Laboratory fingerprint card files are disposed of as follows:*

(1) one fingerprint card set is forwarded to the Federal Bureau of Investigation; the other set is destroyed when 75 years old

(2) fingerprint card indices and related correspondence are destroyed when all administrative needs have expired.

Counterintelligence records on persons not affiliated with DoD must be destroyed within 90 days or one year under criteria set forth in DoD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy.

Files retained in the Naval Criminal Investigative Service Field Offices and Naval Criminal Investigative Service Resident Agencies and Polygraph sites are temporary and are destroyed after 90 days or one year, as appropriate.

Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records; and magnetic erasing for computerized records. Optical digital data and CD ROM records are destroyed as specified by NAVSO P-5239-26, 'Remanence Security Guidebook' of September 1993.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, Code 00JF, 716 Sicard Street, SE, Washington, DC 20388–5380.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, or Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the Naval Criminal Investigative Service. This can be accomplished by providing an unsworn declaration that states 'I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, Code 00JF, 716 Sicard Street, SE, Washington, DC 20388–5380.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth and Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the Naval Criminal Investigative Service. This can be accomplished by providing an unsworn declaration that states 'I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From individual, DoD and Military Department records; Federal Agency records; foreign law enforcement agencies, security, intelligence, investigatory, or administrative authorities; state, county, and municipal records; employment records of public schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus; financial institutions which maintain credit information on individuals such as loan and mortgage companies, credit unions, banks, etc.; transportation companies (airlines, railroad, etc.); other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: telephone directories, city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What, a listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and the U.S. Navy BIDEX (Biographical Index); any other type of miscellaneous records deemed necessary to complete the investigation or inquiry; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses, victims, confidential sources, and or other individuals deemed necessary to complete the investigation.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2), since the information is compiled and maintained by the Naval Criminal Investigative

Command, which performs as its principle function the enforcement of criminal laws.

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 98–17316 Filed 6–29–98; 8:45 am]

BILLING CODE 5000–04–F

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Agency information collection activities: proposed collection; comment request.

**SUMMARY:** The Energy Information Administration (EIA) is soliciting comments concerning the proposed modifications and extensions of the following Electric Power Forms:

EIA–411, ''Coordinated Bulk Power Supply Program Report;''
EIA–412, ''Annual Report of Public Electric Utilities;''
EIA–417R, ''Electric Power Systems Emergency Report;''
EIA–759, ''Monthly Power Plant Report;''
EIA–767, ''Steam-Electric Plant Operation and Design Report;''
EIA–826, '' Monthly Electric Utility Sales and Revenue Report with State Distributions;''
EIA–860, ''Annual Electric Generator Report;''
EIA–861, ''Annual Electric Utility Report;''
EIA–867, ''Annual Nonutility Power Producer Report;'' and
EIA–900, ''Monthly Nonutility Sales for Resale Report.''

**DATES:** Written comments must be submitted on or before August 31, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the DOE contact listed below of your intention to do so as soon as possible.

**ADDRESSES:** Send comments to John G. Colligan, Energy Information Administration, Electric Power Division, EI–53, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0650; telephone (202) 426–1174; e-mail jcolliga@eia.doe.gov; and FAX (202) 426–1311.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of forms and instruction sets should be directed to John Colligan at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

## I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, Title 44, U.S.C. Chapter 35).

*Confidentiality Notice*

The issue of the confidential treatment of data collected on any of the forms listed above is being addressed and will be resolved as a separate matter under other **Federal Register** notices. Whatever final confidentiality procedures are implemented will be applied to each of the EIA survey forms above as appropriate.

## II. Current Actions

The EIA will request (a) a 3-year extension, through December 31, 2001, for all forms listed, and (b) modifications to the specific forms as described below. The proposed changes the EIA is requesting through this action reflect the current state of the electric power industry.

Additional changes may be required, prior to the new expiration date, in order to be up-to-date with the rapidly changing industry.

Form EIA–411, ''Coordinated Bulk Power Supply Program,'' Propose changing planning projections period (Items 1, 2, and 4) from 10 years to 5 years. The form and instructions will be modified to show this changes.

Form EIA–412, ''Annual Report of Public Electric Utilities,'' Propose changing the reporting threshold from 120,000 MWh to 150,000 MWh. The instructions will be modified to show this change.

Form EIA–417R, ''Annual Summary of Emergency Occurrences,'' no change.

Form EIA–759, ''Monthly Power Plant Report,'' no change.

Form EIA–767, ''Steam-Electric Plant Operation and Design Report,'' no change.

Form EIA–826, ''Monthly Electric Utility Sales and Revenue Report with State Distributions.'' Propose adding

two new data tables: (1) the distribution company will be asked to provide data about the monthly bill if they are billing the consumer for another energy service provider; and (2) the energy service provider will report data if billing is done by them or a third party other than the distribution company. The form and instructions will be modified to show these changes.

Form EIA–860, ''Annual Electric Generator Report,'' two changes are proposed: (1) the survey form designation and name will be altered to, Form EIA–860–A, ''Annual Electric Generator Report—Utility;'' and (2) the planning projection period (Schedule II and Schedule III) will be changed from 10 years to 5 years. The form and instructions will be modified to show these changes.

Form EIA–861, ''Annual Electric Utility Report.'' Three changes are proposed: (1) Item 5 on Schedule II indicating new plant intention(s) will be deleted; (2) Schedule IV will require energy service providers to report the total dollars paid by the consumer(s) whether or not the energy service provider issues the bill; and (3) the Demand Side Management (Schedule V) threshold will be raised from 120,000 MWh to 150,000 MWh. The form and instructions will be modified to show these changes.

Form EIA–867, ''Annual Nonutility Power Producer Report.'' Three changes are proposed: (1) the form name and number will be changed to, Form EIA–860–B ''Annual Electric Generator Report—Nonutility''; (2) Item 3(a) estimated useful thermal output and 3(b) thermal output used will be added to Schedule IVB. The form and instructions will be modified to show these changes.

Form EIA–900, ''Monthly Nonutility Sales for Resale Report.'' Six changes are proposed: (1) the survey name will be changed to ''Monthly Nonutility Power Report;'' three new data elements on (2) fuel type, (3) gross generation (kWh), and (4) fossil fuel consumption will be added; and (5) sales for resale and (6) sales to other end users will be deleted. The form and instructions will be modified to show these changes.

## III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency? Does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden estimates for each form collection are shown below. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

EIA–411, ''Coordinated Bulk Power Supply Program Report,''—15.50 hrs. per response (previous estimate was 20.7 hrs.)

EIA–412, ''Annual Report of Public Electric Utilities,''—30.3 hrs. per response (no change from previous estimate)

EIA–417R, ''Electric Power Systems Emergency Report and Annual Summary of Emergency Occurrences,''—2.89 hrs. per response (no change from previous estimate). Note: The frequency, magnitude, and duration of emergency occurrences are hard to predict, therefore making reporting times hard to predict.

EIA–759, ''Monthly Power Plant Report,''—1.4 hrs. per response (no change from previous estimate)

EIA–767, ''Steam-Electric Plant Operation and Design Report,'' 84 hrs. per response for plants of 100 MW or more, and 4 hrs. for plants from 10 MW but less than 100 MW. (no change from previous estimate)

EIA–826, ''Monthly Electric Utility Sales and Revenue Report with State Distributions,''—1.5 hrs. per response (previous estimate was 1.4 hrs.)

EIA–860, ''Annual Electric Generator Report,''—15.0 hrs. per response (previous estimate was 15.3 hrs)

EIA–861, ''Annual Electric Energy Industry Report,''—7.5 hrs per response (previous estimate was 7.9 hrs.)

EIA–867, ''Annual Nonutility Power Producer Report,''—2.12 hrs. per response (no change from previous estimate)

EIA–900, ''Monthly Nonutility Sales for Resale Report,''—.25 hrs. per response (no change from previous estimate).

Please comment on (1) the accuracy of our estimates and (2) how the agency could minimize the burden of the collections of information, including the use of automated collection techniques or other forms of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collections. What is the estimated: (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operating and maintaining and purchasing service costs associated with these data collections?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the forms?

B. For what purpose would you use the data? Be specific.

C. Identify any alternate sources of data. Do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

**Statutory Authority:** Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, June 24, 1998.

**Lynda T. Carlson,**

*Director, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 98–17371 Filed 6–29–98; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–596–000]**

## Columbia Gulf Transmission Company; Notice of Application

June 24, 1998.

Take notice that on June 5, 1998, as supplemented on June 17, 1998, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP98–596–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA)

and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement facilities and for permission and approval to abandon the facilities being replaced, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf requests permission and approval to abandon by removal one 12,050 horsepower (Hp) International Organization for Standard (ISO) rated compressor unit and appurtenances located in Corinth, Alcorn County, Mississippi; one 12,050 Hp (ISO) rated compressor unit and appurtenances located in Inverness, Humphreys County, Mississippi; and one 14,000 Hp (ISO) rated compressor unit and appurtenances located in Hampshire, Maury County, Tennessee. As replacement for the aforementioned compressor units, Columbia Gulf proposes to construct and operate one 17,282 Hp (ISO) rated compressor unit and appurtenances at the Corinth Compressor Station; one 17,282 Hp (ISO) rated compressor unit and appurtenances at the Inverness Compressor Station; and one 14,550 Hp (ISO) rated compressor unit at the Hampshire Compressor Station. The total cost associated with the construction and operation of the compressor units is approximately $37,600,000.

Columbia Gulf also proposes to increase the certificated Hp rating of the Corinth Compressor Station from 44,750 Hp (ISO) to 49,982 Hp (ISO); the Inverness Compressor Station from 38,100 Hp (ISO) to 45,832 Hp (ISO); and the Hampshire Compressor Station from 40,050 Hp (ISO) to 43,100 Hp (ISO).

Finally, Columbia Gulf proposes to increase the maximum certificated capacity level of its mainline by 96,555 Dth per day to 2,218,868 Dth per day.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–17326 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–2881–000]**

## Entergy Services, Inc.; Notice of Filing

June 19, 1998

Take notice that on May 1, 1998, Entergy Services, Inc., (Entergy Services), as agent for System Energy Resources, Inc. (SERI), tendered for filing the annual informational update (Update), containing the 1998 redetermination of the Monthly Capacity Charges, prepared in accordance with the provisions of SERI's Power Charge Formula (PCF) Tariff. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Section 2(B) of the PFC.

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 and protests should be filed on or before June 26, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–17325 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–622–000]**

### National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

June 24, 1998.

Take notice that on June 16, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed a request with the Commission in Docket No. CP98–622–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new sales tap authorized in blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to construct and operate a new sales tap for delivery of approximately 60 Mcf per hour of gas with a maximum capacity of approximately 183 Mcf per hour to National Fuel Gas Distribution Corporation. National Fuel states that the proposed sales tap would be located on its Line V–M194 in Jefferson County, Pennsylvania. National Fuel estimates the cost of construction would be $100,000.

National Fuel further states that this addition is not prohibited by its existing tariff, that there is sufficient capacity to accomplish deliveries without determent or disadvantage to other customers, that its peak day and annual deliveries would not be effected and that the total volumes deliveries would not exceed the total volumes authorized prior to their request.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest if filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–17328 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 13–007, 2047–003, 2060–003, 2084–007, 2318–004, 2320–013, 2330–034, 2474–006, 2482–022, 2539–008, 2569–026, 2616–010, 2641–002, 2645–070, 2696–005, 2701–026, 2713–037, 2837–005, 5984–023, 7320–010, 7387–005, 11408–015, 4472–016, 6032–038]**

### Niagara Mohawk Power Corporation; Notice Rejecting Request for Rehearing

June 24, 1998.

By letter order issued May 6, 1998, the Deputy Executive Director and Chief Financial Officer denied Niagara Mohawk Power Corporation's (Niagara Mohawk) appeal of certain portions of the fiscal year 1997 administrative annual charge bills for the above-captioned projects. On June 8, 1998, Niagara Mohawk filed a request for rehearing of that letter order with the Commission.

Section 313(a) of the Federal Power Act [1] requires an aggrieved party to file a request for rehearing within thirty days after the issuance of the Commission's order, in this case by June 5, 1998. Because the 30-day deadline for requesting rehearing is statutorily based, it cannot be extended and Niagara Mohawk's request for rehearing must be rejected as untimely.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–17329 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 16 U.S.C. 825*l*.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–616–000]**

### Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

June 24, 1998.

Take notice that on June 16, 1998, Northern Border Pipeline Company (Northern Border), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP98–616–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct a tap on its system in Will County, Illinois authorized in blanket certificate issued in Docket No. CP84–420–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern Border proposes to install a tap to serve as a future point of interconnect with Amoco Chemicals (Amoco). Northern Border states that a tap would consist of a twelve-inch tee and valve. The estimated cost of the proposed facilities would be $52,000 which Northern Border would install on Amoco's property as partial consideration for an easement across its property. Northern Border reports that it would file to obtain Commission approval to operate the proposed tap, at such time Amoco elects to interconnect with Northern Border.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–17327 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6117–8]**

### Air Pollution Control; Proposed Actions on Clean Air Act Grants to the Santa Barbara Air Pollution Control District

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

**ACTION:** Proposed determination with request for comments and notice of opportunity for public hearing.

**SUMMARY:** The U.S. EPA has made a proposed determination under section 105(c) of the Clean Air Act (CAA) that a reduction in expenditures of non-Federal funds for the Santa Barbara County Air Pollution Control District (SBAPCD, or ''District'') in Santa Barbara, California is the result of a non-selective reduction in expenditures. This determination, when final, will permit the SBAPCD to keep the financial assistance awarded to it by EPA for FY–98 under section 105(c) of the CAA.

**DATES:** Comments and/or requests for a public hearing must be received by EPA at the address stated below by July 30, 1998.

**ADDRESSES:** All comments and/or requests for a public hearing should be mailed to: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

**FOR FURTHER INFORMATION CONTACT:** Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1250.

**SUPPLEMENTARY INFORMATION:** Under the authority of section 105 of the CAA, EPA provides financial assistance (grants) to the SBAPCD to aid in the operation of its air pollution control programs. In FY–97 EPA awarded the SBAPCD $328,732, which represented approximately 8% of the District's budget. In FY–98, EPA awarded the SBAPCD $307,000, which represented approximately 7.6% of the District's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–98 § 105 application, which EPA reviewed in the fall of 1997, the SBAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $3,678,150. This MOE at the time of the grant award was sufficient to meet the requirements of the CAA because it was higher than the projected FY97 MOE of $3,570,793. Based on this information, EPA awarded SBAPCD its FY98 grant in December, 1997. In January of 1998, SBAPCD submitted an actual FY97 MOE of $3,701,408. This resulted in the projected FY98 MOE level of $3,678,150 not being sufficient to meet the MOE requirements of the CAA because it is lower than the actual FY–97 MOE, with a shortfall of $23,258 between the MOE for FY–97 and FY98. In order for the District to be eligible to keep its FY98 grant and to receive the additional EPA funding which has become available to SBAPCD for FY98, EPA must make a determination under Section 105(c)(2).

The SBAPCD is a single-purpose agency whose primary source of funding is permit fee revenue. Fees associated with permits issued by the SBAPCD go directly to the district to fund its operations. It is the ''unit of Government'' for Section 105(c)(2) purposes. The SBAPCD submitted documentation to EPA which shows that since FY97 air permit fee revenues decreased because of declining economic conditions which caused the business community to curtail operations, resulting in fewer permits issued and fees collected. As a result, the SBAPCD's overall budget and its MOE decreased. The SBAPCD also submitted documentation to EPA which shows that the District lost 12.25 staff positions since FY97. These reductions in fees and staff have been non-selective in that all programs within SBAPCD have been impacted.

In summary, the SBAPCD's MOE reductions resulted from budget cuts stemming from a loss of fee revenues due to circumstances beyond the District's control. EPA proposes to determine that the SBAPCD's lower FY–98 MOE level meets the § 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SBAPCD to keep the funds received from EPA for FY–98.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by July 30, 1998 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by July 30, 1998.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: June 17, 1998.

**David P. Howekamp,**

*Director, Air Division, Region 9.*

[FR Doc. 98–17377 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6117–9]**

### Clean Air Act Advisory Committee; Mobile Sources Technical Review Subcommittee Notification of Public Advisory Subcommittee Open Meeting

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notification is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on July 15, 1998 from 9:30 a.m. to 4:00 p.m. Eastern Standard Time (pre-registration at 8:30 a.m.) at the U.S. EPA National Vehicle and Fuel Emissions Laboratory Office Building located at 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph. 734/214-4200 (adjacent to the Lab Building located at 2565 Plymouth Road, Ann Arbor, MI 48105). This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups and be briefed on and discuss other current issues in the mobile source

program including: Various topics related to Tier II, OMS outreach activities, NAS/NRC study to evaluate the MOBILE model, and the mobile emissions transient test (METT) and the inspection and maintenance (I/M) programs.

Members of the public requesting technical information should contact:

Mr. Philip A. Lorang, Designated Federal Officer, U.S. EPA—NVFEL Office Bldg., 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4374, Fax: 734/214–4821, email: lorang.phil@epa.gov.

or

Mr. John T. White, Alternate Designated Federal Officer, U.S. EPA—NVFEL Office Bldg., 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4353, Fax: 734/214–4821, email: white.johnt@epa.gov.

Further information can also be obtained by visiting the FACA website for the Mobile Sources Technical Review Subcommittee and its workgroups at: http://transaq.ce.gatech.edu/epatac/index.htm.

Members requesting administrative information should contact: Ms. Jennifer Criss, FACA Management Officer, U.S. EPA—NVFEL Office Bldg., 2000 Traverwood Drive, Ann Arbor, MI 48105, FACA Help Line: 734/214–4518, Fax: 734/214–4821, email: criss.jennifer@epa.gov.

Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than July 5, 1998.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

**Donald E. Zinger,**

*Acting Director, Office of Mobile Sources.*

[FR Doc. 98–17378 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–44649; FRL–5798–7]**

## TSCA Chemical Testing; Receipt of Test Data

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of test data on *N*-Methylpyrrolidone (CAS No. 106–91–21). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

### I. Test Data Submissions

Test data for *N*-Methylpyrrolidone were submitted by the *N*-Methylpyrrolidone Producers Group, Inc. on behalf of its member companies: ARCO Chemical Company, BASF Corporation, and ISP Management Company, Inc. These companies are the test sponsors of record for the consent order. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on May 22, 1998. The submission includes a final report entitled ''Oncogenicity Study with *N*-Methylpyrrolidone (NMP) Two-Year Feeding Study in Sprague Dawley Rats.'' This chemical is an inert, stable, polar solvent that is used in a wide variety of processes. Its commercial uses result from its strong and frequently selective solvent power. One of the major uses of NMP is the extraction of aromatics from lubricating oils. It is also used as a medium for polymerization and as a solvent for finished polymers. It is the preferred solvent in a variety of chemical reactions and the manufacture of numerous chemical intermediates and in products such as plastics, surface coatings, and pesticides. An important new use of this chemical is as a substitute for methylene chloride in paint strippers. NMP is also used in the recovery and purification of acetylenes, olefins, and diolefins, in the removal of sulfur compounds from natural and refinery gases, and in the dehydration of natural gas.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44649). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

**Authority:** 15 U.S.C. 2603.

### List of Subjects

Environmental protection, Test data.

Dated: June 17, 1998.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 98–17383 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

## Notice of proposed information collections contained in 1998 Biennial Review - Streamlining of Radio Technical Rules; Comments Requested

June 19, 1998.

**SUMMARY:** On June 11, 1998, the Federal Communications Commission (Commission) adopted a Notice of Proposed Rule making (NPRM) in MM Docket No. 98–93 (FCC No. 98–117) in the matter of 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules. The summary of the NPRM was published in the Federal Register on June 22, 1998. The NPRM contains proposed information collections subject to the Office of Management and Budget (OMB) approval. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. The NPRM has been submitted to OMB for review under Section 3507(d) of the PRA.

The Commission, as part of its continuing effort to reduce paperwork

burdens, invites the general public and OMB to comment on the proposed information collections contained in the Notice, as required by the PRA. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before August 31, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed, you should advise the contact listed below as soon as possible.

**ADDRESSES:** All comments should be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. In addition to filing comments with the Secretary, copies should be submitted to Les Smith, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, D.C. 20554, or via the Internet to lesmith@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, NW., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the proposed information collection(s), contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* None.

*Title:* NPRM - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules.

*Form Number:* FCC 301, FCC 302–FM, FCC 302–AM, FCC 303–S, FCC 340, FCC 349, FCC 350.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit, Not-for-profit institutions.

*Number of Respondents:* 4,650.

*Estimated Time Per Response:* 2.5 hours to 1,106 hours.

*Frequency of Response:* On occasion reporting requirement.

*Cost to Respondents:* $28,672,625 (Consulting engineers and attorney fees).

*Total Annual Burden:* 28,639 hours.

*Needs and Uses:* On June 11, 1998, the Commission adopted a Notice of Proposed Rulemaking in MM Docket No. 98–93 (FCC 98–117) in the matter of 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules. The summary of this NPRM was published in the Federal Register on 6/22/98. This rulemaking proceeding was initiated to obtain comments concerning the Commission's proposed amendment of certain technical rules and policies governing the radio broadcast services—in order to enhance opportunities for improvement of facilities and service and eliminate unnecessary administrative burdens and delays, while maintaining the technical integrity of the radio broadcast services. This review was undertaken in conjunction with the Commission's current efforts to streamline its existing rules and eliminate unnecessary or redundant procedural requirements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–17278 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Approved by Office of Management and Budget

June 24, 1998.

The Federal Communications Commission (FCC) has received Office of management and Budget (OMB) approval for the following information collection pursuant to the Paperwork Reduction Act of 1995, Public law 104–03. 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 control number. For further information contact Judy Boley, Federal Communications Commission, (202) 418–0214.

**Federal Communications Commission.**

*OMB Control No.:* 3060–0686.

*Expiration Date:* 06/30/2001.

*Title:* Streamlining the International Section 214 Authorization Process and Tariff Requirements.

*Form No.:* N/A.

*Respondents:* Business or other for-profit entities.

*Estimated Annual Burden:* 1,000 respondents; 3,531 annual responses; an average of 42 hours per response; 148,178.8 total annual burden hours for all requirements.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $106,500.

*Frequency of Response:* Quarterly; on occasion; semi-annually; annually.

*Description:* The information collections pertaining to parts 1 and 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections contained in amendments to § 63.10 of the Commission's rules are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power. The information collected pursuant to part 61 of the rules is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934. The information collections under Section 310(b)(4) of the Act are necessary to determine, under that section, whether a greater than 25 percent indirect foreign ownership interest in a U.S. common carrier ratio licensee would be inconsistent with the public interest. Obligation to respond: required. Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records management, Washington, D.C. 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–17279 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–F

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Notice

**FEDERAL REGISTER CITATION OF PREVIOUS NOTICE:** 63 FR 33931, June 22, 1998.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, June 24, 1998.

**CHANGE IN THE MEETING:** The following topic was moved from the open portion to the closed portion of the meeting:

- Proposed Settlement Agreement Regarding the Federal Home Loan Bank of Des Moines Petition

The above matter was moved to the closed portion of the meeting, pursuant

to section 906.5(b) of the Finance Board regulations and exempt under section 552b(c)(8) of title 5 of the United States Code.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Secretary to the Board, (202) 408–2837.

**William W. Ginsberg,**

*Managing Director.*

[FR Doc. 98–17540 Filed 6–26–98; 2:48 pm]

BILLING CODE 6725–01–P

## 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, July 6, 1998.

**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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, 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: June 26, 1998.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 98–17558 Filed 6–26–98; 3:36 pm]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 98035]**

### Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection Notice of Availability of Funds

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for new and competitive continuation cooperative agreements for epidemiologic and behavioral research studies of AIDS and HIV infection. This program addresses the ''Healthy People 2000'' priority area of HIV Infection. These awards will help support researchers in the conduct of HIV-related epidemiologic research studies that foster prevention of HIV infection or HIV-related disease in children. These include studies that address the follow-up of HIV-infected children and other HIV epidemiologic studies.

*Research Issue: HIV Infection in Children—Follow Up of Perinatally-Infected Children*

Applications are solicited for continued prospective follow-up of HIV-infected children enrolled in the Perinatal AIDS Collaborative Transmission Study (PACTS) between 1986 and 1998. This is a research issue of programmatic interest to the health care community and to CDC for FY 1998. This issue is considered significant to gaining a greater understanding of the epidemiology of AIDS and HIV infection. Follow-up should be done at least every 3 months, and include: (1) collecting information on HIV-related clinical conditions, HIV-related medication use, hospitalizations, and vital status; and (2) collecting blood specimens for viral load testing, lymphocyte immunophenotyping, and storage for other HIV-related testing. Applicants will use a common data collection instrument, protocol, and data management system designed and implemented in collaboration with CDC.

Applications submitted by organizations that examine additional important HIV-related epidemiologic research issues will also be accepted and considered for funding.

#### B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

#### C. Availability of Funds

Approximately $4.5 million is available in FY 1998 to fund approximately 6 awards. It is expected that awards will range from $250,000 to $1.5 million. It is expected that 4 projects addressing HIV infection in children and 2 other HIV epidemiologic studies will be funded. Awards will begin on or about September 29, 1998, and will be made for a 12-month budget period, within a project period of up to 3 years. Funding estimates may change.

*Funding Preferences*

Preference will be given to competing continuation applications from satisfactorily performing projects over applications for projects not already receiving support under the program.

#### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under ''Recipient Activities,'' below, and CDC will be responsible for conducting activities listed under ''CDC Activities'', below:

*Recipient Activities*

Applicants addressing the same research issue should be willing to participate in collaborative studies with other CDC-sponsored researchers, including using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Applicants will be required to pool data for analysis and publication. Applicants are also required to:

A. Develop the research study protocol and data collection forms.

B. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocol and the program requirements.

C. Continue to follow study participants as determined by the study protocol.

D. Establish procedures to maintain the rights and confidentiality of all study participants.

E. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocol.

F. Collaborate and share data and specimens (when appropriate) with other collaborators to answer specific research questions.

G. Conduct data analysis with all collaborators as well as present and publish research findings.

*CDC Activities*

A. Provide technical assistance in the design and conduct of the research.

B. Provide technical guidance in the development of study protocols, consent forms, and data collection forms.

C. Assist in designing a data management system.

D. Assist in performance of selected laboratory tests.

E. Coordinate research activities among the different sites.

F. Assist in the analysis of research information and the presentation and publication of research findings.

**E. Application Content**

*Competing Applications (New Applications and Competing Continuation Applications)*

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Applicants should identify their proposed research issue on line one of the face page of the application form. Applicants must demonstrate adequate capacity for continued follow-up of children, routine virologic and immunologic testing, data management, and specimen storage. Applicants also must demonstrate the capacity to analyze data and specimens collected in the PACTS project to address important issues related to preventing HIV infection and its manifestations in children, and provide proposed analyses to be completed during the project period.

In future years, noncompeting continuation applications submitted within the approved project period should include:

A. brief progress report describing the accomplishments of the preceding budget period;

B. new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation), that is, not in the initial application; and

C. annual budget and justification (budget items that are unchanged from the preceding budget period do not need rejustification, simply list the items in the budget and note that they are continuation items).

**F. Submission and Deadline**

On or before JULY 31, 1998, submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398) to: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98035, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mail Stop E–15, Atlanta, Georgia 30305–2209.

Applications must be postmarked by the U.S. Postal Service or a commercial carrier by the deadline date. If your application does not arrive in time for submission to the independent review panel, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent reviewer group appointed by CDC. Applicants will be ranked on a scale of 100 maximum points according to the research area identified. All applicants must state which research category they are addressing. Applicants should demonstrate the applicant's ability to address the research problem in a collaborative manner with other collaborators. Applications will be reviewed and evaluated based on the evidence submitted.

*HIV Infection in Children*

A. Recruitment, Retention, and Adherence to Study Protocol (20 Points)

(1) Extent of applicant's experience in perinatal and pediatric HIV infection epidemiologic research.

(2) Evidence of ability to successfully follow HIV-infected children in longitudinal research studies.

(3) Evidence of ability to collect complete data from HIV-infected children.

B. Description and Justification of Research Plans (30 Points)

(1) Extent of familiarity and quality of experience pertinent to proposed research activities.

(2) Understanding of the research objectives as evidenced by high quality of the proposed plan for research and a study design that is appropriate to answer research questions.

(3) Originality of research, extent to which it does not replicate past or present research efforts, and direct relevance of research to guiding current efforts to prevent perinatal HIV transmission and HIV disease progression in children.

(4) Feasibility of plans to follow study participants, and adequacy of sample size to address research questions. This includes demonstration of the experience of the investigator in enrolling and following such persons, and the comprehensiveness of the plan to protect the rights and confidentiality of all participants.

(5) Thoroughness of plans for data management, data analysis, and laboratory analysis; reasonableness of data collected; and statistical rigor.

(6) Extent to which proposal demonstrates feasible plans for coordinating research activities of multiple clinical sites, where appropriate, and with CDC. Letters of support from cooperating organizations that demonstrate the nature and extent of such cooperation should be included.

(7) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

C. Research Capability (30 Points)

(1) Capacity to conduct study as evidenced by quality of experience with similar or related research as evidenced by previous related research, including demonstration of ability to collect, manage, and analyze accurate data in a timely manner.

(2) Demonstration of working relationships with proposed collaborators.

(3) Demonstration of epidemiologic, behavioral, administrative, clinical, laboratory, data management, and statistical expertise needed to conduct proposed research.

D. Staffing, Facilities, and Time-line (20 Points)

(1) Availability of qualified personnel with realistic and sufficient percentage-time commitments, and the clarity of the descriptions of the duties and responsibilities of project personnel.

(2) Adequacy of plans for project oversight to assure quality of data.

(3) Adequacy of facilities, equipment, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

(4) Adequacy of time line for completion of project activities.

E. Other (not Scored)

(1) *Budget:* Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

(2) *Human Subjects:* Does the application adequately address the institutional review board requirements for the protection of human subjects?

_____ Yes _____ No

Comments: _____

*Other HIV/AIDS Epidemiologic Research Studies*

A. Familiarity With and Access to Study Population (25 Points)

(3) Extent of applicant's knowledge of issues faced by study population and experience in working with this population.

(4) Existence of linkages to facilitate recruitment from and referral to programs providing services for the study population and letters of support from these programs.

(5) Feasibility of plans to involve the study population, their advocates, or service providers in the development of research and intervention activities and to inform them of research results.

(6) Evidence that plans for recruitment of and outreach for study participants will include establishing partnerships with communities.

B. Description and Justification of a Research Plan (40 Points)

(1) Quality of the review of the scientific literature pertinent to the proposed study, including theoretical basis for research, and relevance of research questions.

(2) The originality of research, the extent to which it does not replicate past or present research efforts (including ongoing efforts not yet described in publications), and relevance to guiding current HIV prevention efforts.

(3) Applicant's understanding of the research objectives as evidence by high quality of the proposed research plan with a study design that is appropriate to answer research questions.

(4) Feasibility of plans to sample, recruit, enroll, test, interview, and follow study participants and adequacy of sample size to address research questions. This includes demonstration of the availability of HIV-infected potential study participants and persons at risk for HIV infection and the experience of the investigator in enrolling and following such persons in a culturally and linguistically appropriate manner; the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research, including: (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits; comprehensiveness of the plan to protect the rights and confidentiality of all participants; and proposed justification when representation is limited or absent.

(5) Thoroughness of analysis plans, reasonableness for data collected, statistical rigor and complexity.

(6) Extent to which study proposal demonstrates assurance of compliance with multisite research requirements (e.g., common protocol, data collection, and computer and data management systems), if appropriate.

C. Demonstrate Staff's Capability to Conduct Research (20 Points)

(1) Capacity to conduct study as evidenced by experience with similar or related research as evidenced by their previous related research.

(2) Extent of the team's productive working relations with proposed collaborators.

(3) Ability, willingness, and need to collaborate with researchers from other study sites in study design and analysis, including use of common forms, and sharing of specimens (when appropriate) and data.

D. Staffing, Facilities, and Time-line (15 Points)

(1) Availability of qualified personnel with realistic and sufficient percentage-time commitments; and the clarity of the description of duties and responsibilities of project personnel with epidemiologic, behavioral, administrative, clinical, laboratory, data management, and statistical responsibilities.

(2) Adequacy of the facilities, equipment, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

(3) Adequacy of time line.

E. Other (not Scored)

(1) Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

(2) Human Subjects: Does the application adequately address the institutional review board requirements for the protection of human subjects?

_____ Yes _____ No

Comments: _____

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of

1. Annual progress report;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status report and performance report, no more than 90 days after the end of the project period send all reports to: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mail Stop E–15, Atlanta, GA 30305–2209.

For descriptions of the following Other Requirements, see Attachment 1:

AR98–1 Human Subjects
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–6 Patient Care
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act
AR98–10 Smoke-Free Workplace Requirements

AR98–11 Healthy People 2000

AR98–12 Lobbying Restrictions

### I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Sections 301(a) and 317(k)(2) [42 U.S.C. 241(a) and 247b(k) (2)], as amended. The Catalog of Federal Domestic Assistance number is 93.943.

### J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and to identify the Announcement number, 98035. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98035, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mail Stop E–15, Atlanta, GA 30305–2209, Telephone (404) 842–6550, E-mail kgm1@cdc.gov.

See also the CDC Internet home page at: www.cdc.gov

For program technical assistance, contact: Jeff Efird, Acting Chief, Epidemiology Branch, Division of HIV/AIDS Prevention Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention Centers for Disease Control and Prevention (CDC) 1600 Clifton Road, NE., Mail Stop E–45, Atlanta, Georgia 30333, Telephone (404) 639–6130, E-mail jle1@cdc.gov.

Eligible applicants are encouraged to call before developing and submitting their applications.

Dated: June 23, 1998.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–17305 Filed 6–29–98; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## National Institute for Occupational Safety and Health

**[Program Announcement 98096]**

## Economic Evaluation of Engineering Control Interventions for Drywall Sanding Construction Activities; Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program to conduct an economic evaluation and variable analyses of engineering control interventions during drywall sanding construction activities. This program addresses the ''Healthy People 2000'' priority area of Occupational Safety and Health.

The purpose of the program is to identify the financial and behavior factors which are affected by implementing drywall sanding engineering controls. These factors may occur throughout the construction-model hierarchy from the individual worker on up to the building owner. A successful project will serve as an example throughout the construction industry that the cost and benefits of providing a clean and safe working environment should be evaluated from the big-picture perspective as opposed to the level of acquisition. Such an example could lead to new implementation strategies to increase the use of engineering controls and ultimately improve the construction work environment.

### B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

### C. Availability of Funds

Approximately $95,000 is available in FY 1998 to fund one award. It is expected that the award will be renewed on an annual basis for an additional two years at an approximate amount of $95,000 per year. It is expected that the awards will begin on or about September 1, 1998, with 12-month budget periods within project periods of up to three years. The funding estimate is subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*Use of Funds:* The applicant should allocate funds for at least one annual CDC/NIOSH directed meeting.

*Programmatic Interest:* The applicant should address the availability of drywall sanding dust exposure reduction interventions and the economic impact and related variable analyses of some or all of the identified interventions upon the various organizational layers (e.g. worker, subcontractor, general contractor, building owner) within the building construction process.

### D. Program Agreement Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

*A. Recipient Activities*

1. Develop, implement, and evaluate a study protocol.
2. Provide statistical analysis of the data.
3. Disseminate study results to the construction safety and health community.
4. Collaborate with CDC/NIOSH on these activities and the activities listed below.

*B. CDC/NIOSH Activities*

1. Providing scientific and technical collaboration including study design and protocol development, and data analysis.
2. Monitor and evaluate scientific and operational accomplishments of the project through site visits, telephone calls, and review of technical reports and interim data analysis.
3. Collaborate with awardee(s) on data analysis, and interpretation of findings.
4. Review the results of the study and collaborate, where appropriate, in the preparation and publication of results in peer-reviewed journals and construction industry trade publications.

### E. Application Content

Use the information in the Program Requirements, Other Requirements, and

Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

**F. Submission and Deadline**

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 10, 1998, submit the application to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98096, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

*1. Understanding of the Problem (15 Percent)*

Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the general objectives of the proposed cooperative agreement, and (b) evidence of ability to design an effective evaluation study.

*2. Experience (15 Percent)*

The extent to which the applicant's prior work and experience in evaluating occupational safety and health intervention efforts and/or experience within the construction trades affected by drywall finishing operations.

*3. Goals, Objectives and Methods (35 Percent)*

The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which the methods are sufficiently detailed to allow assessment of whether the objectives can be achieved for the budget period. Clearly state the evaluation method for evaluating the accomplishments. The extent to which a qualified plan is proposed that will help achieve the goals stated in the proposal.

This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*4. Facilities and Resources (10 Percent)*

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project. The proposal should include a commitment from the participating institution, as evidenced by a written agreement. For applicants who have already identified potential construction site(s) to conduct the evaluation, the proposal should include a commitment, as evidenced by a written agreement, from the building owner, general contractor, and relevant subcontractors with jurisdiction over the drywall finishing and budget management operations, when such exist at the applicant's anticipated study location(s).

*5. Project Management and Staffing Plan (15 Percent)*

The extent to which the management staff and their working partners are clearly described, appropriately assigned, and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate personnel who have the needed qualifications to implement the proposed plan. The extent to which the applicant has the capacity to design, implement, and evaluate the proposed intervention program.

*6. Collaboration (10 Percent)*

The extent to which all partners are clearly described and their qualifications and the extent to which their intentions to participate are explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. Evidence or a statement should be provided that these funds do not duplicate already funded components of ongoing projects.

*7. Budget Justification (Not Scored)*

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

*8. Human Subjects (Not Scored)*

If human subjects will be involved, how will they be protected, i.e., describe the review process which will govern their participation.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports including a brief program description and a listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, GA 30305–2209

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I (included in the application package).

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a) and 671(e)(7)]. The Catalog of Federal Domestic Assistance number is 93.262 for the National Institute for Occupational Safety and Health.

**J. Where To Obtain Additional Information**

To receive additional written information call 1–888–GRANTS4. You

will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 98096. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. Please refer to NIOSH announcement number 98096 when requesting information and submitting an application.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained by contacting: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98096, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, GA 30305–2209, telephone (404) 842–6804, Email address: vxw1@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance contact: Kenneth Mead, P.E., telephone (513) 841–4319, Email kcm3@cdc.gov, National Institute for Occupational Safety and Health, Center for Disease Control and Prevention (CDC), Division of Physical Sciences and Engineering, 4676 Columbia Parkway, Mailstop R–5, Cincinnati, OH 45226.

National Occupational Research Agenda (NORA): CDC, NIOSH is committed to the program priorities developed by NORA. Copies of the publication, ''The National Occupational Research Agenda'' may be obtained from The National Institute of Occupational Safety and Health, Publications Office, 4676 Columbia Parkway, Cincinnati, OH 45226–1998 or telephone 1–800–356–4674, and is available through the NIOSH Home Page, ''http://www.cdc.gov/niosh/nora.html''.

Dated: June 23, 1998.

**Diane D. Porter,**

*Acting Director, National Institute For Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–17300 Filed 6–29–98; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Program Announcement Number 98042; Cooperative Agreement for Waterborne Disease Occurrence Studies

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds to provide assistance for conducting waterborne disease occurrence studies that will aid in producing a national estimate of waterborne disease.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

### Authority

This program is authorized under Section(s) 301(a), 317(k)(1), and 317 (k)(2) of the Public Health Service Act [42 U.S.C. 241(a), 247b(k)(1) and 247b(k)(2)], as amended.

### Smoke-free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

### Eligible Applicants

Applications may be submitted by public and private non-profit entities, including universities; university-affiliated systems including not-for-profit medical centers; research institutions and rehabilitation hospitals; State and local health departments and other related State government agencies; federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned non-profit businesses are eligible to apply.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

### Availability of Funds

Approximately $450,000 is available in FY 1998 to fund approximately three awards. It is expected that the average award will be $150,000. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

### Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of Department of Health and Human Services (HHS) funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State Legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

## Background

The last few years have seen increased attention to microbiological contaminants in drinking water. This concern has led to a number of new provisions for research and regulation of such contaminants in the August 1996 Amendments to the Safe Drinking Water Act (SDWA) P.L. 104–182. Section 137(d) of the 1996 amendments, 42 U.S.C. Section 300j–18d calls for waterborne disease occurrence studies to estimate the incidence of waterborne disease in the United States. Only a limited number of studies have been done to develop such an estimate, in part because some of the methodologies needed require further refinement and experience in conducting studies of this problem is limited. Unfortunately, no single study or study design will allow such an estimate to be made with confidence. The Environmental Protection Agency (EPA) and CDC are collaborating to aid other organizations to conduct studies regarding the incidence of waterborne disease and etiologic agents causing waterborne disease. Such studies will concentrate on gastrointestinal illness due to microbial contaminants in drinking water, including both well known and emerging bacteria, viruses, and protozoa. This announcement is not intended to support studies addressing illness due to chemical contamination.

## Purpose

The purpose of this cooperative agreement is to provide assistance for conducting studies to: (1) estimate the incidence of waterborne disease due to microbial contamination of drinking water and/or (2) identify and describe the relationship between measures of water quality and health outcomes or the evidence of infection due to gastrointestinal pathogens.

## Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. identify and describe the population to be studied,
2. identify and describe the water system(s) serving the population studied,
3. form a collaborative relationship with the water utility(s) and local health department(s) serving the population to be studied,
4. if appropriate, assess the methods used by the water utility(s) to measure water quality and obtain water quality data. Describe surrogate measures of water contamination that would be evaluated,
5. collect data on outcomes of interest and/or identify and evaluate existing data on these outcomes. If appropriate, collect specimens from human participants to determine the etiologic agents causing gastrointestinal illness. Evaluate the likelihood that the etiologic agents are waterborne,
6. maintain data, including databases, and confidentiality protections,
7. document your Quality Assurance Project Plan (QAPP), as required by EPA, for assuring that the data collected are of the expected quality for their intended use and are properly assessed,
8. analyze data to describe the relationship(s) of the health outcome(s) with water-related exposure variables,
9. evaluate and describe the generalizability of the study findings, and
10. analyze collected data and disseminate research results by appropriate methods such as publication in journals, presentation at meetings, conferences, etc.

B. CDC Activities

CDC and EPA will provide technical assistance in the design and conduct of the research. This may include:

(1) providing technical consultation in the design and conduct of the project, including data collection and analytic approach, and evaluation;

(2) providing technical assistance regarding special clearances and approval for human subjects and data collection;

(3) providing format and guidance for QAPP

(4) providing educational materials, including working with grantees to develop new materials that might be needed; and

(5) facilitating exchange of information among recipients.

## Technical Reporting Requirements

An original and two copies of an annual progress report are required and must be submitted no later than 90 days after the end of each budget period. These progress reports must include: (1) a comparison of actual accomplishments to the goals and objectives established for the period; and (2) the reasons for failure, if established goals were not met; (3) other pertinent information including, when appropriate, analysis and explanation of performance costs significantly higher than expected. All manuscripts published as a result of the work supported in part or whole by the cooperative agreement will be submitted with the progress report.

An annual Financial Status Report (FSR) must be submitted no later than 90 days after the end of each budget period.

The final financial status and progress reports are required no later than 90 days after the end of the project period. All reports are submitted to Grants Management Branch, CDC. Please send all reports or other correspondence to: Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E–18, Room 314, Atlanta, GA 30305–2209.

## Application Content

*Application*

An original and five copies of the application should be submitted to the Grants Management Officer, Grants Management Branch, CDC at the address above. All applicants must develop their application in accordance with the PHS Form 398 (revised 5/95), information contained in this cooperative agreement announcement, and the instructions outlined below. In order to ensure an objective, impartial, and prompt review.

*General Instructions*

1. All pages must be clearly numbered.
2. A complete index to the application and its appendixes must be included.
3. The original and two copies of the application must be submitted unstapled and unbound. No bound material will be accepted.
4. All material must be typewritten, single spaced, and in unreduced type (no smaller than font size 12) on 8 1/2'' by 11'' white paper, with at least 1'' margins, headers, and footers.
5. All pages must be printed on one side only.

*Specific Instructions*

The application narrative must not exceed 10 pages (excluding budget and appendixes). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

1. *Abstract:* Provide a brief (two pages maximum) abstract of the project.
2. *Background and Need:* Discuss the background and need for the proposed project. Demonstrate a clear

understanding of the purpose and objectives of this cooperative agreement program. Illustrate and justify the need for the proposed project that is consistent with the purpose and objectives of this cooperative agreement program.

3. *Capacity and Personnel:* Describe applicant's past experience in conducting projects/studies similar to that being proposed. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Include in an appendix curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide in an appendix letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan. Specifically, letters of support from water utilities that outline the types of data they intend to share should be provided. Do not include letters of support from CDC or EPA personnel. Letters of support from CDC or EPA will not be accepted in the application. Award of a cooperative agreement implies CDC and EPA participation as outlined in the Program Requirements section of this announcement.

4. *Objectives and Technical Approach:* Describe specific objectives for the proposed project which are measurable and time-phased and are consistent with the purpose and goals of this cooperative agreement. Present a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all Recipient Activities. If proposing a two (2) year project, provide a detailed description of first-year activities and a brief overview of activities in the second year. Clearly state the proposed length of the project period. Clearly identify specific assigned responsibilities for all key professional personnel. Include a clear description of applicant's technical approach/methods which are directly relevant to the study objectives. Describe specific study protocols or plans for the development of study protocols. Describe the nature and extent of collaboration with CDC, EPA, and/or others during various phases of the project. Describe in detail a plan for evaluating study results and for evaluating progress toward achieving project objectives.

5. *Budget:* Provide in an appendix a budget and accompanying detailed justification for the first-year of the project that is consistent with the purpose and objectives of this program. If proposing a multi-year project, also provide estimated total budget for each subsequent year.

6. *Human Subjects:* Whether or not exempt from HHS regulations, if the proposed project involves human subjects, describe adequate procedures for the protection of human subjects.

7. *Women, Racial, and Ethnic minorities:* Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

**Noncompeting Continuation Applications**

For noncompeting continuation applications submitted within the approved project period, include only:

1. brief progress report describing the accomplishments of the preceding budget period;

2. New or significantly revised items or information (objectives, scope of activities, operational methods, evaluation), that is not in the initial application; and

3. Annual budget and justification (budget items that are unchanged from the preceding budget period do not need re-justification, simply list the items in the budget and note that they are continuation items).

**Evaluation Criteria**

The applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10 points):

Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this cooperative agreement program.

2. Capacity and Personnel (35 points total):

a. Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. (10 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. (10 points)

c. Extent to which applicant includes letters of support from non-applicant organizations, individuals, etc. Extent to which the letters clearly indicate the author's commitment to participate as described in the operational plan, such as a water utility's intent to provide specific water quality data. If appropriate, the extent to which letters from non-participating local and state health departments express their support of the operational plan (15 points). Do not include letters of support from CDC or EPA personnel.

3. Objectives and Technical Approach (55 points total):

a. Extent to which applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this cooperative agreement program and which are measurable and time-phased. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all Recipient Activities. Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the plan is adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. If there is a laboratory component to the proposal, the extent to which plans for ensuring quality of measurements are included. The extent the proposed plan includes the inclusion of women, ethnic, and racial groups in the proposed research to include (1) the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with the community and recognition of mutual benefits will be documented.

If the proposed project involves human subjects, whether or not exempt from the HHS regulations, the extent to which adequate procedures are described for the protection of human subjects. Note: Objective Review Group (ORG) recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear

inadequate and the ORG has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable. (25 points)

c. Extent to which applicant describes adequate and appropriate collaboration with CDC, EPA and/or others (e.g. water utilities and health departments) during various phases of the project. (10 points)

d. Extent to which applicant provides a detailed and adequate plan for evaluating study results and for evaluating progress toward achieving project objectives. (10 points)

4. Budget (not scored):

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372 (E.O.), which sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should forward them to Sharron Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E–18, Room 314, Atlanta, GA 30305–2209. The due date for State process recommendations is 30 days after the application deadline date for new and competing continuation awards (the appropriation for this financial assistance program was received late in the fiscal year and would not allow for an application receipt date that would accommodate the 60-day State recommendation process period). The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR, Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

*Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research*

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

*Application Submission and Deadline*

The original and five copies of the completed application PHS Form 398 (revised 5/95), OMB Control Number 0925–0001) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305–2209, on or before August 5, 1998.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. received on or before the deadline date; or

b. sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. a. or 1. b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305–2209, (404) 842–6801. E-mail address: gcg4@cdc.gov.

Programmatic technical assistance may be obtained from Bill MacKenzie, MD, Division of Parasitic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road,

NE., Atlanta, GA 30333, Telephone: (770) 488–7784. E-mail address: wrm0@cdc.gov

Please refer to Announcement Number 98042 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone:(202) 512–1800.

Dated: June 24, 1998.

**John L. Williams,**

*Director Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–17306 Filed 6–29–98; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACF/ACYF/CB–98–04A]**

### Announcement of the Availability of Financial Assistance and Request for Applications to Support Demonstration Projects Under the Adoption Opportunities Program

**AGENCY:** Administration on Children, Youth and Families (ACYF), ACF, DHHS.

**ACTION:** Notice of correction.

**SUMMARY:** This notice corrects the Notice of an Announcement published in the **Federal Register** on June 9, 1998 (63 FR 31502) by correcting the category of eligible applicants under Priority Area 98.3—Achieving Increased Placements of Children in Foster Care. For this priority area only State agencies are eligible to compete for funds. Under section 203(d)(1) of Title II of the Child Abuse Prevention and Treatment Act, as amended, Pub. L. 104–235, states that the Secretary ''shall make grants for improving State efforts to increase the placement of foster children legally free for adoption * * *. Additionally, states are encouraged to collaborate with private, non-profit agencies and Indian tribes to increase the number of adoptions or permanent placements of children who are in foster care.

**FOR FURTHER INFORMATION CONTACT:** Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Highway, Suite 415, Arlington, Virginia 22201, the telephone number is 1–800–351–2293.

**SUPPLEMENTARY INFORMATION:** On June 9, 1998, the Administration on Children, Youth and Families published the Notice of Announcement Number: CB–98–04 in the **Federal Register** soliciting proposals to support demonstration projects under the Adoption Opportunities Program. The eligibility should have been limited to State social service agencies. This amendment corrects that error. Further, the Children's Bureau encourages states to develop collaborate agreements with private, non-profit agencies and Indian tribes to increase the number of adoptions or permanent placements of children who are in foster care. All other requirements for mailed applications/overnight/express mail service and hand-delivered applications/applicant couriers remain the same as in the original announcement.

(Catalog of Federal Domestic Assistance Program Number 93.652, Adoption Opportunities Program)

Dated: June 23, 1998.

**James A. Harrell,**

*Deputy Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 98–17313 Filed 6–29–98; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. OCSE 98TIP–1]**

### Child Support Enforcement Demonstration and Special Projects; Federal/Tribal Grant (Cooperative Agreement) to Plan Tribal Child Support Programs

**AGENCY:** Office of Child Support Enforcement, ACF, DHHS.

**ACTION:** Notice.

**SUMMARY:** The OCSE invites eligible entities to submit competitive grant applications to assist them in planning and preparing to run their own child support program. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

**DATES:** The closing date for submission of applications is August 31, 1998. See Part IV of this announcement for more information on submitting applications.

**ADDRESSES:** Application kits containing the necessary forms and instructions to apply for a grant under this program announcement are available from: Administration for Children and Families, Office of Child Support Enforcement, Office of Automation and Special Projects (OCSE/OASP), 370 L'Enfant Promenade, SW, 4th Floor, West Wing, Washington, DC 20447, Attention: Jay Adams, (202) 401–9240, 401–5539 (FAX), ljadams@ACF.DHHS.GOV, www.acf.dhhs.gov/programs/oa/form.htm.

**FOR FURTHER INFORMATION CONTACT:** Administration for Children and Families (ACF), OCSE/OASP, Lucille Dawson at (202) 401–5437 or Lawrence A. Dunmore, III at (202) 205–4554, for specific program concerns regarding the announcement. Lois Hodge, Grants Officer/Team 1, (202) 401–2344.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, and Catalog of Federal Domestic Assistance (CFDA) Number.

Part II: Applicant and Project Eligibility—eligible applicants, priorities and preferences, and project and budget periods.

Part III: The Review Process—intergovernmental review, initial ACF screening, competitive review and evaluation criteria, funding reconsideration.

Part IV: The Application—application development, application submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424 (0348–0043); 424A (0348–0044); 424B (0348–0040); Disclosure of Lobbying Activities (0348–0046); Uniform Project Description (0970–0139 Expiration date 10/31/00).

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.

## Part I. Background

*A. Child Support Enforcement Program History*

The mission of the Child Support Enforcement (CSE) Program, which was established in 1975 under Title IV–D of the Social Security Act, is to ensure that children receive financial and emotional support from both their parents. The program locates non-custodial parents, establishes legal paternity, and establishes and enforces child support orders. The Federal Office of Child Support Enforcement (OCSE) administers the program in cooperation with the State and local agencies designated under Title IV–D of the Social Security Act. The OCSE provides direction, guidance and oversight to the States. The Federal government reimburses the bulk of the State agencies' administrative costs in the conduct of their responsibilities for the program.

*B. Program Purpose*

The CSE program is a Federal matching program where Federal funding is available for State expenditures eligible for reimbursement. A number of Tribes have been involved in CSE by way of agreements with States. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended by the Balanced Budget Act of 1997, provides a number of new opportunities for Tribes and tribal organizations to become more involved in child support enforcement.

The first of these opportunities involves changes to the Federal law that allow funding of tribal activities carried out under cooperative agreements with States. Prior to enactment of PRWORA, Federal funding under title IV–D of the Act was available, through the State, for eligible expenditures of tribes pursuant to a cooperative agreement with the State under which the State delegated any functions of the IV–D program to the tribal entity and the tribal entity complied with all requirements of title IV–D applicable to the function or functions delegated to the tribe. The amended Act authorizes State/Tribal cooperative agreements under which Tribes no longer need to satisfy all applicable IV–D requirements as specified in 45 CFR 303.107(c). Federal Financial Participation (FFP) continues to be available for expenditures under State/Tribal cooperative agreements if such expenditures are otherwise eligible for reimbursement under title IV–D of the Act and 45 CFR part 304.

*C. Direct Tribal Funding*

The second of these opportunities, direct funding from the Federal government, is the subject of this program announcement. New section 455(f) of the Social Security Act allows the Secretary to make direct payments to an Indian tribe or tribal organization that demonstrates to the Secretary's satisfaction that it has the capacity to operate a child support enforcement program meeting the following objectives of Part IV–D of the Social Security Act.

- Establishment of paternity;
- Establishment, modification, and enforcement of support orders;
- Location of absent parents.

The Law requires the Secretary to issue regulations establishing the requirements which must be met by an Indian tribe or tribal organization in order for it to be eligible for direct funding under subsection 455(f).

*D. Program Objectives*

OCSE has undertaken a consultation process to obtain ideas, suggestions, and concerns from Tribes and tribal organizations regarding the regulations it must prepare before issuing direct grants to Tribes. OCSE (has or is in the process of) holding three major regional consultation meetings. In addition, OCSE sent packages of information on child support to all tribes and all major tribal organizations. An ''800'' number, (1–800–433–1434), has been established so that tribes can phone in comments pertaining to information on child support. The OCSE has also established a location on its internet site to receive comments. The internet address is http://www.acf.dhhs.gov/programs/cse/fdback.htm OCSE thinks that another way to get information to help shape the Native American CSE program is to issue a small number of grants to Tribes and Tribal organizations to assist them in planning and preparing to run their own child support program. While our consultation meetings are good forums for discussion about child support enforcement and a good way for us to hear tribal ideas and concerns, we think that additional useful information can be gained by working with a few tribes in actually taking the first steps towards running their own child support enforcement programs.

*E. Legislative Authority*

Section 452(j) of the Social Security Act, 42 U.S.C.652(j), provides Federal funds for technical assistance, information dissemination and training of Federal and State staff, research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

*F. Availability of Funds*

$100,000 is available for FY 1998. We envision issuing 2 to 4 grants. A non-Federal match is not required. OCSE is also providing grants under a separate program announcement, **Federal Register**: May 8, 1998 (Volume 63, Number 89) pages 25490–25493, to a wide variety of public and private agencies. The purpose of these grants is to further the national child support mission, vision and goals as outlined in the CSE Strategic Plan with Outcome Measures for Fiscal Years 1995–1999. A copy of the CSE Strategic Plan may be obtained upon request (See **ADDRESSES** of this announcement).

*G. CFDA NUMBER: 93.601—Child Support Enforcement Demonstrations and Special Projects*

## Part II. Applicant and Project Eligibility

*A. Eligible Applicants*

Eligible applicants for these Tribal child support program grants are Tribes and Tribal Organizations. We will be selecting Tribes from two categories:

(1) Tribes or tribal organizations with some experience with the child support program, e.g., through cooperative agreements with States and (2) tribes and tribal organizations with no direct experience with child support enforcement.

*B. Federal Participation*

OCSE anticipates substantial Federal involvement in these projects. OCSE will offer successful grantees considerable technical assistance and support. OCSE will be available to help grantees review their laws, look at how other Tribes have approached child support issues. This assistance will be provided by a combination of teleconferences and on-site visits.

*C. Project Priorities and Preferences*

OCSE plans to issue these grants mainly to Tribal governments or consortia of Tribal governments. While other tribal organizations may apply for grants under this announcement, they should be aware that OCSE will give preference to tribal governments or consortia, as noted in

## Part III: Review Process, Competitive Review and Evaluation Criteria in this Announcement

Our expectation is that these grants will result in Tribes with previous CSE experience being capable at the end of

the grant to receive either direct funding under section 455(f) or a follow-up demonstration grant. For Tribes with no previous CSE experience, we expect that by the end of the grant period, the Tribe will have in place a detailed plan to guide the Tribe in its efforts to qualify for direct Federal funding under section 455(f).

*D. Project and Budgets Periods*

Generally, project and budget periods for these projects will be up to 17 months. However, OCSE will consider projects up to 36 months, if unique circumstances warrant. If OCSE approves a project for a time period longer than 17 months, OCSE will provide funding in discrete 12-month increments, or ''budget periods.'' Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

**Part III: The Review Process**

*A. Intergovernmental Review*

This program is not covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.''

*B. Initial ACF Screening*

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

*C. Competitive Review and Evaluation Criteria*

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement. Applications will be evaluated according to the following four criteria. Applications can receive a maximum of 90 points on these four criteria. Up to an additional 10 points will be awarded based on whether the applicant is a tribal government or consortia of Tribal governments and on the extent of the applicant's contribution to project costs.

(1) Criterion I: Understanding and Project Structure (Maximum: 20 points)

The application should describe the extent to which the project will contribute to OCSE's knowledge regarding how to structure the Native American CSE program and prototype. In evaluating this criteria, OCSE will look at the extent to which lessons learned from the applicant's project could be applied to a range of other Tribes and Tribal organizations.

(2) Criterion II: Design and Project Goals (Maximum: 20 Points)

The application should include a sound project design to achieve the project's stated goals. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework.

(3) Criterion III: Project Contribution and Effectiveness (Maximum: 30 Points)

The applicant should identify the extent to which the grant project will contribute to the Tribe's or organization's ability to run a successful CSE program.

(4) Criterion IV: Reasonable Costs (Maximum: 20 Points)

The project costs are reasonable in relation to the identified tasks.

(5) Additional Points: Tribal Contributions and Tribal Governments/ Consortia (Maximum: 10 Points)

OCSE will award 1 point for contributions amounting to less than 10% of the total project budget; 3 points for contributions between 10% and 25%; and 5 points for contributions over 25%.

OCSE will give preference to Tribal governments or consortia of Tribal governments by adding 5 points to the scores of applications from such organizations.

*D. Funding Reconsideration*

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

**Part IV. The Application**

*A. Application Development*

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement. The length of the application, not including the application forms and all attachments, i.e., Certifications, Disclosures, and Assurances, should not exceed 20 pages. The narrative should be typed double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides. Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process. Each page of the application will be counted to determine the total length. If applications exceed 20 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers. Each applicant should submit one signed original and two additional copies of the application.

Applications must contain the following elements:

(1) Project Description: The application must spell out how the project will be carried out, i.e., what specific activities will be funded through the grant and who will carry them out.

(2) Project Goals and Objectives: The application must state what the project is intended to accomplish.

(3) Budget: The application must provide a proposed budget. If the applicant plans to contribute funds or other resources to the project, these should be described in the application.

*B. Application Submission*

1. Mailed applications postmarked after the closing date will be classified

as late and will not be considered in the competition.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Lois Hodge/Tribal Child Support, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant will be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Lois Hodge/Tribal Child Support.'' ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

Dated: June 19, 1998.

**David Gray Ross,**

*Commissioner, Office of Child Support Enforcement.*

[FR Doc. 98–17265 Filed 6–29–98; 8:45 am]

BILLING CODE 4184–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0022]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements relating to the manufacture and distribution of hearing aid devices.

**DATES:** Submit written comments on the collection of information requirements by August 31, 1998.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information set forth below.

With respect to the following collections of information, FDA invites comments on: (1) Whether the proposed collections of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burdens of the proposed collections of information, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burdens of the collections of information on respondents, including through the use of appropriate automated collection techniques, when appropriate, and other forms of information technology.

### Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale—21 CFR 801.420 and 801.421 (OMB Control Number 0910–0171—Extension)

Under section 520(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(e)), the Secretary of the Department of Health and Human Services may, under certain conditions, require by regulation that a device be restricted to sale, distribution, or use only upon authorization of a licensed practitioner or upon other prescribed conditions. Sections 801.420 and 801.421 (21 CFR 801.420 and 801.421) implement this authority for hearing aids, which are restricted devices. The regulations require that the manufacturer or distributor provide to the user data useful in selecting, fitting, and checking the performance of a hearing aid through distribution of a User Instructional Brochure. The User Instructional Brochure must also contain technical data about the device, instructions for its use, maintenance, and care, a warning statement, a notice about the medical evaluation

requirement, and a statement if the aid is rebuilt or used.

Hearing aid dispensers are required to provide the prospective user, before the sale of a hearing aid, with a copy of the User Instructional Brochure for the hearing aid model that has been, or may be, selected for the prospective user and to review the contents of the brochure with the buyer. In addition, upon request by an individual who is considering the purchase of a hearing aid, the dispenser is required to provide a copy of the User Instructional Brochure for that model hearing aid or the name and address or telephone number of the manufacturer or distributor from whom a User Instructional Brochure for the hearing aid may be obtained. Under conditions of sale of hearing aid devices, manufacturers or distributors shall provide sufficient copies of the User Instructional Brochure to sellers for distribution to users and prospective users and provide a copy of the User Instructional Brochure to any health care professional, user, or prospective users who requests a copy in writing. The regulations also require that the patient provide a written statement that he or she has undergone a medical evaluation within the previous 6 months before the hearing aid is dispensed, although informed adults may waive the medical evaluation requirement by signing a written statement. Finally, the regulation requires that the dispenser retain for 3 years copies of all physician statements or any waivers of medical evaluations.

The information obtained through this collection of information is used by FDA to ensure that hearing aids are sold and used in a way consistent with the public health.

The information contained in the User Instructional Brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispenser. The data is used by these health care professionals to evaluate the suitability of a hearing aid, to permit proper fitting of it, and to facilitate repairs. The data also permits the comparison of the performance characteristics of various hearing aids. Noncompliance could result in a substantial risk to the hearing impaired because the physician, audiologist, or dispenser would not have sufficient data to match the aid to the needs of the user.

The respondents to this collection of information are hearing aid manufacturers, distributors, dispensers, health professionals, or other for profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 801.420(c) | 40 | 5 | 200 | 40 | 8,000 |
| 801.421(a)(1) | 9,900 | 52 | 514,800 | 0.10 | 51,480 |
| 801,421(a)(2) | 9,900 | 97 | 960,300 | 0.30 | 288,090 |
| 801.421(b) | 9,900 | 162 | 1,600,000 | 0.30 | 480,000 |
| 801.421(c) | 9,900 | 5 | 49,700 | 0.17 | 8,449 |
| Totals | | | | | 836,019 |

[1]1There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—Estimated Annual Recordkeeping Burden[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 801.421(d) | 9,900 | 162 | 1,600,000 | 0.25 | 400,000 |

[1]1There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 801.420(c) estimate assumes that 40 hearing aid manufacturers/distributors each distribute 5 different models of hearing aids. Thus, the 40 hearing aid manufacturers/distributors will provide 5 different User Instructional Brochures to sellers for distribution to prospective users and users. The completion of each User Instructional Brochure is estimated to require 40 staff hours.

Sections 801.421(a)(1) and 801.421(a)(2) estimates are based on information obtained in the FDA review mentioned previously which revealed that medical evaluations were obtained in 32 percent of the sales and signed waivers were obtained in 60 percent of the sales. For § 801.421(a)(1) estimate, the figure was derived by multiplying the current number of annual hearing aid sales (1.6 million) by .32 and then dividing by the number of hearing aid dispensers (9,900). FDA estimates that it will take hearing aid dispensers .10 hours to request and obtain the required medical evaluation documentation. For § 801.421(a)(2) estimate, the figure was derived by multiplying the current number of hearing aid sales (1.6 million) by .60 and then dividing by the number of hearing dispensers (9,900). FDA estimates that it will take hearing aid dispensers .30 hours to articulate the required disclosure and prepare and make available a waiver form for adults 18 years of age or older to sign. For § 801.421(b) estimate, FDA assumes that 9,900 hearing aid dispensers will have 162 sales annually. For all such sales, the dispenser must provide the prospective user a copy of the User Instructional Brochure and the opportunity to read and review the contents with him/her orally, or in the predominant method used during the sale. FDA estimates that this exchange will involve .30 staff hours.

Section 801.421(c) estimate assumes that 40 hearing aid manufacturers/distributors, and 9,900 dispensers will provide copies of the User Instructional Brochure to any health care professional, user, or prospective user who request a copy in writing. It is estimated that 5 written requests for copies of the brochures will be received by each hearing aid manufacturer/distributor and dispenser annually. It is estimated that each request for a brochure will take .17 staff hours to complete. This effort consists of the hearing aid manufacturer/distributor or

hearing aid dispenser locating the appropriate User Instructional Brochure for the specific model and mailing the brochure to the requester.

Section 801.421(d) recordkeeping estimate assumes that 9,900 hearing aid dispensers will each retain 162 records. Each record documents the dispensing of a hearing aid to a hearing aid user. Each recordkeeping entry is estimated to require 0.25 staff hours.

Dated: June 19, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–17289 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98F–0430]**

### 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 sodium acrylate/styrene sulfonate copolymer for use as an antiscalant boiler treatment where steam from treated boilers may contact food.

**DATES:** Written comments on the petitioner's environmental assessment by July 30, 1998.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Parvin M. Yasaei, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3189.

**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 8A4598) has been filed by Nalco Chemical Co., One Nalco Center, Naperville, IL 60563. 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 sodium acrylate/sulfonated styrene copolymer for use as an antiscalant boiler treatment where steam from treated boilers may contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued 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 July 30, 1998, 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 25.51(b)(1).

Dated: June 8, 1998.

**Laura M. Tarantino,**

*Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 98–17292 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98F–0433]**

### Servo Delden BV; Filing of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Servo Delden BV has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyethylene glycol mono-isotridecyl ether sulfate, sodium salt as a surfactant in adhesives intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4600) has been filed by Servo Delden BV, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of polyethylene glycol mono-isotridecyl ether sulfate, sodium salt as a surfactant in adhesives intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 4, 1998.

**Laura M. Tarantino,**

*Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 98–17321 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Center for Veterinary Medicine; Change of Internet Address

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a change in the Internet address for the Center for Veterinary Medicine (CVM) to ensure that users can continue to have uninterrupted access to CVM's Internet site. The CVM Internet site is one of the agency's methods of communicating with the public regarding the ongoing mission of CVM, which is the organization within the agency that regulates the manufacture and distribution of animal drugs, feeds, and related products.

**FOR FURTHER INFORMATION CONTACT:** Jerome J. McDonald, Center for Veterinary Medicine (HFV–16), Food and Drug Administration, 7500 Standish

Pl., Rockville, MD 20855, 301–827–6505.

**SUPPLEMENTARY INFORMATION:** On May 17, 1998, CVM changed its Internet address to ''www.fda.gov/cvm''. If users enter the old CVM internet address (''www.cvm.fda.gov''), a message will notify them of the change and will automatically redirect them to the new address. The message redirecting users to the new Internet site (redirect) will be in effect for approximately 3 months. CVM recommends that users who have bookmarked pages within the CVM website (e.g., What's New, the On-line Library, CVM's telephone directory, etc.) update the bookmarks with the new CVM Internet address. If users do not update the bookmarks, an error message will result and no redirect instructions will be provided.

Dated: June 17, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–17320 Filed 6–29–98; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Request for Public Comment: 30-day Proposed Collection: Common Reporting Requirements for Urban Indian Health Programs

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, which requires opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was published in the March 10, 1998, **Federal Register** (63 FR 11688) and allowed 60 days of public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

**PROPOSED COLLECTION:** *Title:* 09–17–0007, ''Common Reporting Requirements for Urban Indian Health Programs.'' *Type of Information Collection Request:* Revision of currently approved information collection, 0917–0007, ''Common Reporting Requirements for Urban Indian Health Programs,'' which expires July 31, 1998. *Form Number:* Reporting forms contained in IHS instruction manual, ''Urban Indian Health Programs Common Reporting Requirements.''

*Need and Use of Information Collection:* The requested information is provided by American Indian/Alaska Native (AI/AN) urban health organizations contracting with the IHS to provide health care services to AI/ANs in urban settings. The information is collected annually and is used to monitor and evaluate contractor performance, prepare budget reports, and allocate resources.

*Affected Public:* Businesses or other for-profit, individuals and households, not-for-profit institutions; and State, Local, or Tribal Governments. *Type of Respondents:* Urban Indian health care organizations.

The table below provides the following: types of data collection instruments, estimated number of respondents, number of responses per respondent, average burden hour per response, and total annual burden hour.

| Data collection instrument | Estimated number of respondents | Responses per respondent | Annual number of responses | Average burden hour per response* | Total annual burden hours |
|---|---|---|---|---|---|
| Face Sheet | 34 | 1 | 34 | 0.50 (30 mins) | 17.0 |
| Table 1 | 34 | 1 | 34 | 2.00 (120 mins) | 68.0 |
| Table 2 | 34 | 1 | 34 | 0.75 (45 mins) | 26.0 |
| Table 3 | 34 | 1 | 34 | 2.25 (135 mins) | 77.0 |
| Table 4 | **24 | 1 | 23 | 0.50 (30 mins) | 12.0 |
| Table 5 | 34 | 1 | 34 | 2.00 (120 mins) | 68.0 |
| Table 6 | 34 | 1 | 34 | 2.00 (120 mins) | 68.0 |
| Table 7 | 34 | 1 | 34 | 1.00 (60 mins) | 34.0 |
| Table 8 | 34 | 1 | 34 | 1.25 (75 mins) | 43.0 |
| Total | 261 | | 261 | | 413.0 |

*For ease of understanding, burden hours are also provided in actual minutes.
**Excludes urban Indian health projects with no medical components.

There are no capital costs, operating costs, or maintenance costs to report.

### Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (1) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbook Parkway, Suite 450, Rockville, MD 20852–1601; call non-Toll free at (301) 443–1116; send via fax to (301) 443–1522; or send your e-mail request, comments, and return address to: Ihodahkw@hqe.ihs.gov.

Comment Due Date: Comments regarding this information are best assured to having their full effect if received on or before July 30, 1998.

Dated: June 19, 1998.

**Michel E. Lincoln,**

*Acting Director.*

[FR Doc. 98–17323 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Exxon Valdez Oil Spill Public Advisory Group; Request for Nominations

**AGENCY:** Department of the Interior, Office of the Secretary.

**ACTION:** Exxon Valdez Oil Spill Public Advisory Group Nomination Solicitation.

**SUMMARY:** The Exxon Valdez Oil Spill Trustee Council is soliciting nominations for the Public Advisory Group, which advises the Trustee Council on decisions related to the planning, evaluation, and conduct of injury assessment and restoration activities using funds obtained for purposes of restoration as part of the civil settlement pursuant to the T/V Exxon Valdez oil spill of 1989. Public Advisory Group members will be selected to serve a two-year term beginning in October 1998.

**DATES:** All nominations should be received on or before August 21, 1998.

**ADDRESSES:** Nominations should be sent to the Exxon Valdez Oil Spill Trustee Council, 645 G Street, Suite 401, Anchorage, Alaska 99501 (fax: 907/276–7178).

**FOR FURTHER INFORMATION CONTACT:** Douglas Mutter, Designated Federal Official, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011; or Cherri Womac, Exxon Valdez Oil Spill Trustee Council, 645 G Street, Suite 401, Anchorage, Alaska, (907) 278–8012 or (800) 478–7745. A copy of the charter for the Public Advisory Group is available upon request.

**SUPPLEMENTARY INFORMATION:** The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Group was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities or other use of natural resources damage recoveries obtained by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Group will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Public Advisory Group consists of 17 members representing the public at large (5 members) and the following special interests: aquaculture, commercial fishing, commercial tourism, forest products, environmental, conservation, local government, Native landowners, recreation users, sport hunting and fishing, subsistence, and science/academic. Two additional ex officio non-voting members are from the Alaska State House of Representatives and the Alaska State Senate.

Nominees need to submit the following information to the Trustee Council:

1. A biographical sketch (education, experience, address, telephone, fax);
2. Information about the nominee's knowledge of the region, peoples or principal economic and social activities of the area affected by the T/V Exxon Valdez oil spill, or expertise in public lands and resource management;
3. Information about the nominee's relationship/involvement (if any) with the principal interest to be represented;
4. A statement explaining any unique contributions the nominee will make to the Public Advisory Group and why the nominee should be appointed to serve as a member;
5. Any additional relevant information that would assist the Trustee Council in making a recommendation; and
6. Answers to the conflict of interest questions listed below. Public Advisory Group members and their alternates are chosen to represent a broad range of interests. It is possible that action could be taken by the Public Advisory Group when one or more of the members have a direct personal conflict of interest which would prejudice and call into question the entire public process. To avoid this and to enable the Trustee Council to choose appropriate individuals as members and/or alternates to members, it is necessary that each nominee provide the following information with their information packet. If the answer to any of these questions is yes, please provide a brief explanation of your answer. A yes will not necessarily preclude any nominee from being appointed to serve on the Public Advisory Group.

a. Do you, your spouse, children, any relative with whom you live or your employer have, or are you defending, a claim filed before any court or administrative tribunal based upon damages caused by the T/V Exxon Valdez oil spill?

b. Do you, your spouse, children, any relative with whom you live or your employer own any property or interest in property which has been, or is likely to be, proposed for acquisition by the Trustee Council?

c. Have you, your spouse, children, any relative with whom you live or your employer submitted, or likely will submit, a proposal for funding by the Trustee Council, or be a direct beneficiary of such a proposal?

d. Do you know of any other potential actions of the Trustee Council or the Public Advisory Group to have a direct bearing on the financial condition of yourself, your spouse, children, other relative with whom you live or your employer?

Dated: June 24, 1998.

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance.*

[FR Doc. 98–17357 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–RG–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Exxon Valdez Oil Spill Public Advisory Group; Notice of Meeting

**AGENCY:** Department of the Interior, Office of the Secretary.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

**DATES:** July 28, 1998, at 8:30 a.m.

**ADDRESSES:** Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

**SUPPLEMENTARY INFORMATION:** The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of

Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The agenda will include a discussion of the fiscal year 1999 Work Plan and a discussion of the restoration reserve fund. A public meeting on the Work Plan will be held Monday, July 27 at 7:00 p.m. at the same location.

Dated: June 24, 1998.

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance.*

[FR Doc. 98–17356 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–RG–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management Alaska

**[AK–962–1410–00–P]**

## Notice for Publication Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited. The lands involved are in the vicinity of Tok, Alaska.

| Serial Number | Approximate land description | Acreage |
|---|---|---|
| F–21904–81 | T. 21 N., R. 16 E., Copper River Meridian | 11,484 |
| F–21905–93 | T. 20 N., R. 15 E., Copper River Meridian | 2,560 |
| F–21905–94 | T. 20 N., R. 16 E., Copper River Meridian | 7,440 |

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until July 30, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Elizabeth Sherwood,**

*Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.*

[FR Doc. 98–17307 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Draft Erie Canalway Report; Availability

In accordance with Public Law 103–332, the National Park Service announces that the draft Erie Canalway report, a special resource study of the New York State Canal System, including an environmental assessment, is available for public review and comment.

A special resource study is used by the National Park Service to evaluate a resource for national significance and to assess its suitability and feasibility for possible federal designation and further National Park Service involvement. Based on the results of this assessment, the study presents a range of possible management alternatives.

The draft Erie Canalway report, a special resource study of the New York State Canal System, is available for review at most local libraries throughout the canal corridor in Upstate New York. Copies are also available at the Boston Support Office of the National Park Service, 15 State Street, Attn: Ellen Levin Carlson, Boston, MA 02109. Call 617–223–5048 for further information. In addition, NPS staff will be participating in a number of meetings being sponsored by local community groups and institutions throughout the summer. Watch for local meeting notices in local newspapers and newsletters. Written comments will be accepted through August 3, 1998 at Boston Support Office, National Park Service, 15 State Street, Boston, MA 02109; Attn: Ellen Levin Carlson.

**Terry W. Savage,**

*Superintendent.*

[FR Doc. 98–17374 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Meeting of the National Maritime Heritage Grants Advisory Committee

**AGENCY:** National Park Service, Interior

**ACTION:** Notice of Meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that the National Maritime Heritage Grants Advisory Committee will meet from 9:00 a.m. to 5:00 p.m. on the following dates and at the following location.

**DATES:** July 22–24, 1998.

**LOCATION:** Hall of States, 444 North Capitol Street, N.W, Washington, D.C. 20001.

**FOR FURTHER INFORMATION CONTACT:** Kevin Foster, National Maritime Initiative (2280), National Park Service, 1849 C Street N.W., Washington, D.C. 20240. Phone: (202) 343–5969, Fax: (202) 343–1244.

**SUPPLEMENTARY INFORMATION:** Public Law 103–451 (16 U.S.C. 5401), established the National Maritime Heritage Grants Advisory Committee to advise the Secretary of the Interior on matters pertaining to the National Maritime Heritage Grants Program and the National Maritime Heritage Policy.

The purpose of this meeting is to review grant proposals and make funding recommendations to the Secretary and to discuss strategies for achieving the National Maritime Heritage Policy. The Committee will address general business, discuss grant

proposals, and assess the current status of maritime heritage at the national level and recommend appropriate changes, actions, and priorities.

Part of the meeting may be closed to the public. Pursuant to 16 U.S.C. 5404(j) the Committee has the authority to close a Committee meeting by majority vote. A vote will be taken regarding whether to close the meeting, and the meeting may be closed thereafter. Any member of the public may file, for consideration by the Committee, a written statement concerning matters to be discussed. Statements should be submitted to Kevin Foster, Chief, National Maritime Initiative (2280), National Park Service, 1849 C Street N.W., Washington, D.C. 20240.

**Barry Mackintosh,**

*Acting Chief Historian.*

[FR Doc. 98–17310 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent To Update National Park Service Policies for Managing the National Park System

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

**ACTION:** Notice.

**SUMMARY:** The National Park Service (NPS) is updating its policies for managing the National Park System. The policies are contained in Part One of a document titled Management Policies, which was last published in 1988. Interested parties are invited to provide information or suggestions that should be considered by the NPS. The NPS expects to have a draft of the updated Management Policies available for public review and comment by December 30, 1998.

**DATES:** Information from interested parties will be accepted until August 15, 1998.

**ADDRESSES:** Send information or suggestions to Bernard Fagan, National Park Service, Office of Policy, 1849 C Street NW, Room 3230., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Bernard Fagan at (202) 208–7469.

**SUPPLEMENTARY INFORMATION:** The NPS is updating the policies that guide management of the National Park System. The policies are contained in Part One of a document titled Management Policies. In the 10 years since the document was last published, new laws, new technologies, new understandings of the living and non-living environment, and changes in our society have evolved to the point where the NPS's 1988 policies must be re-examined and updated where necessary. Some of those 1988 policies have been updated more recently through Director's Orders, which have been made available for public review and comment. Organizations and individuals with an interest in NPS Management Policies are invited to provide information or suggestions that should be considered by the NPS during the review process. The 1988 edition of NPS Management Policies that will be updated is posted on the Internet at <http://www.nps. gov/planning/mngmtplc/npsmptoc.html>. If you are not able to access this information by Internet and would like to receive a copy through the mail, please contact Bernard Fagan at the address listed above. The NPS expects to have a draft of the updated Management Policies available for public review and comment by December 30, 1998. It also will be posted on the NPS Internet site.

Dated: June 11, 1998.

**Loran G. Fraser,**

*Chief, Office of Policy.*

[FR Doc. 98–17375 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate Cultural Items from New Mexico in the Possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

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

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM which meet the definition of ''sacred object'' and ''object of cultural patrimony'' under Section 2 of the Act.

The seven cultural items are ceramic water vials, decorated with black geometric designs on a white slip.

Between 1920 and 1922, Edgar L. Hewett of the Museum of New Mexico acquired these cultural items from Antonia Tapia, a Rain Priest at the Pueblo of Pojoaque, also known as Posuwage. These objects are now in the collection of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico.

The cultural affiliation of these cultural items is clearly Pojoaque Pueblo as indicated through ethnographic description, museum records, and consultation with representatives of the Pueblo of Pojoaque. Representatives of the Pueblo of Pojoaque have also stated that these seven cultural items have ongoing historical, traditional, and cultural importance central to the tribe itsel, and no individual had or has the right to alienate them.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(4), these seven cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual.

The three cultural items consist of two carved fetish stones and a ceramic *cloud blower* pipe.

The only information available in museum records regarding these cultural items is that they were recovered from site LA 61, a known pre-contact component of the Pueblo of Pojoaque based on material culture and architecture.

The cultural affiliation of these cultural items is clearly Pojoaque Pueblo as indicated through ethnographic information, museum records, and consultation with representatives of the Pueblo of Pojoaque. Representatives of the Pueblo of Pojoaque also state that these three cultural items are needed by traditional Native American religious leaders for the practice of traditional religions by present-day adherents.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(3), these three cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these 10 items and the Pueblo of Pojoaque.

This notice has been sent to officials of the Pueblo of Pojoaque. Representatives of any other Indian tribe that believes itself to be culturally

affiliated with these objects should contact Patiricia House, Director, Museum of Indian Arts and Cultures/ Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344 before July 30, 1998. Repatriation of these objects to the Pueblo of Pojoaque may begin after that date if no additional claimants come forward.

Dated: June 23, 1998.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 98–17311 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from New Mexico in the Possession of the Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

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

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM.

A detailed assessment of the human remains was made by Museum of Indian Arts and Culture/Laboratory of Anthropology professional staff in consultation with representatives of the Pueblo of Pojoaque.

In 1953, human remains representing two individuals were removed from the Pojoaque Grant site (LA 835) during legally authorized excavations under a National Park Service Federal Antiquities permit by Museum of New Mexico staff during a New Mexico State Highway and Transportation Department work project. No known individuals were identified. The two associated funerary objects are ceramic vessels.

Based on the associated funerary objects and other cultural material present, the Pojoaque Grant site has been identified as an Ancestral Puebloan site, occupied between 850—1100 A.D. Further, this site is located on Pueblo of Pojoaque tribal lands. Based on material culture, continuity of occupation, and oral history presented by representatives of the Pueblo of Pojoaque, this site is affiliated with the present-day Pueblo of Pojoaque.

Based on the above mentioned information, officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Museum of Indian Arts and Culture/ Laboratory of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Pojoaque.

This notice has been sent to officials of the Pueblo of Pojoaque. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Patricia House, Director, Museum of Indian Arts and Cultures/ Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344; before July 30, 1998. Repatriation of the human remains and associated funerary objects to the Pueblo of Pojoaque may begin after that date if no additional claimants come forward.

Dated: June 23, 1998.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 98–17312 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on June 25, 1998, a proposed Consent Decree was lodged with the United States District Court for the District of Montana in *United States et al.* v. *Crown Butte Mines, Inc. et al.*, Civil Action No. CV–98–91–BLG–JDS. the proposed Consent Decree: (1) settles claims asserted by the United States and the State of Montana arising out of the release or threat of release of hazardous substances attributable to mining related activities on certain lands located within the New World Mining District in western Montana (the ''Site''); (2) settles claims asserted in a related action also pending in the same court styled *Beartooth Alliance et al.* v. *Crown Butte Mines, Inc et al.*, Cause No. CV 93–154–BLG–JDS; and (3) satisfies and effectuates an agreement in principle entered August 12, 1996, between the United States, the Settling Defendants, and certain public interest groups relating to the termination of efforts to open a proposed gold mine in the New World Mining District (the ''August 12 Agreement'').

The defendants in the action brought by the United States and the State are Crown Butte Mines, Inc. and Crown Butte Resources Ltd (collectively referred to as ''Crown Butte''). The Complaint filed by the United States and the State asserts claims on behalf of both governments under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA'') and asserts claims on behalf of the State pursuant to the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, Chapter 10, part 7, M.C.A. (''CECRA''), to recover costs incurred in connection with response actions taken or to be taken at the Site, for recovery for injuries to natural resources, and to obtain injunctive relief requiring the defendants to take further response and/ or restoration actions at the Site.

Simultaneously with the filing of the Complaint, the United States and the State moved the Court to consolidate their action with the *Beartooth Alliance et al.* action. In that action, Beartooth Alliance, Greater Yellowstone Coalition, Northern Plains Resource Council, Northwest Wyoming Resource Council, Sierra Club, Gallatin Wildlife Association, Wyoming Wildlife Federation, Montana Wildlife Federation, and Wyoming Outdoor Council, all not for profit corporations (collectively referred to herein as ''GYC''), brought claims against Crown Butte, Noranda Minerals Corp., Noranda Exploration, Inc., and Noranda Inc. alleging that the defendants were discharging pollutants into navigable waters of the United States from point sources in the New World Mining District in violation of Section 301(a) of

the Clean Water Act, 33 U.S.C. 1251–1387 (''CWA'').

The parties to the consolidated actions are also parties to, or are interested in, the August 12 Agreement. The August 12, 1996 Agreement involved, among other things, the purchase by the United States of certain interests in properties in the New World Mining District on which Crown Butte proposed to develop a gold mine (the ''District Property''), the escrow of a portion of the purchase monies for use in conducting response and/or restoration actions to address the effects of releases or threats of release of hazardous substances in the New World Mining District and the granting of a number of covenants by the parties to the Agreement. Through Pub. L. 105–83, 111 Stat. 1614, enacted November 14, 1998, Congress authorized the implementation of the Agreement and appropriated up to $65,000,000 for this purpose. With the lodging of the proposed Consent Decree the requirements of Pub. L. 105–83 have been satisfied. Entry of the proposed Consent Decree and the implementation of its provisions will satisfy the objectives and obligations contained in the August 12 Agreement.

Pursuant to the Consent Decree, Crown Butte will transfer, cause to be transferred, or relinquish to the United States those property interests that comprise the District Property. In return, the United States will pay Crown Butte $65,000,000. Immediately upon receipt of the payment from the United States, Crown Butte will pay into escrow $22,500,000 to be used by the United States, after consultation with the State, to implement response and/or restoration actions to address:

(1) Releases or threats of release of hazardous substances, pollutants, or contaminants at the Site; (2) injuries to natural resources resulting from such releases; and (3) other matters affecting water quality or natural resources in certain stream systems on or adjacent to the Site. In addition, the Consent Decree provides that any funds remaining after completion of actions noted in the preceding sentence will be used by the United States for other purposes and/or restoration actions within the New World Mining District. The proposed Consent Decree also contains undertakings by Crown Butte and certain named related companies to forebear in perpetuity any mining related activities in the New World Mining District.

The proposed Consent Decree provides for covenants not to sue from the United States, the State, and GYC in favor of Crown Butte and certain names related companies for claims pursuant to Sections 106 and 107(a) of CERCLA, Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 3et seq., The Clean Water Act, 33 U.S.C. 1251 *et seq.*, and/or the CECRA, Title 75, chapter 10, Part 7, and the Montana Water Quality Act, Title 75, Chapter 5 MCA. In addition, the proposed Consent Decree provides for covenants from Crown Butte, GYC and the State in favor of the United States relating to conditions in the New World Mining District and the response and/or restoration actions to be performed there.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *Crown Butte Mines, Inc. et al.*, D.J. Ref. No. 90–11–3–1674.

The proposed Consent Decree and exhibits may be examined at the following locations: Gallatin National Forest, Supervisor's Office, 10 East Babcock, Ave., Federal Bldg. Boseman, Montana; Gardiner Ranger District, U.S. Highway 89 South, Gardiner, Montana; and, the Office of the United States Attorney, District of Montana, 301 South Park Ave., Helena, Montana, and 2929 Third Avenue, North, Suite 400, Billings, Montana.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $20.50 (without exhibits) or $31.00 (with exhibits) (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–17402 Filed 6–29–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1901–98]**

### Notice of the Pilot Test of the Compliance Measurement System at Ports-of-Entry To Measure Program Effectiveness at Ports-of-Entry

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

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that effective July 1, 1998, the Immigration and Naturalization Service (INS) will begin to test the immigration compliance measurement system known as the Inspections Traveler Examination (INTEX). The INTEXT system will provide the means for the INS to estimate how effective it is in identifying aliens who are attempting to illegally enter the United States through Ports-of-Entry. This compliance system will enable the INS to measure and improve its effectiveness in accomplishing its mission.

**EFFECTIVE DATE:** July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Johnnie Walton, Program Analyst, Immigration and Naturalization Service, Room 4064, 425 I Street, N.W., Washington, D.C. 20536, telephone (202) 305–2035 or fax (202) 514–8345.

**SUPPLEMENTARY INFORMATION:** The INS has created an outcome performance measurement system that gauges the level of compliance and the ability to achieve results in the area of border control at Ports-of-Entry. This compliance measurement system is scheduled to be piloted starting July 1, 1998, at 20 Ports-of-Entry (10 air and 10 land) as shown below.

*Airports—Land Ports*

New York, NY—San Ysidro, CA
Miami, FL—El Paso, TX
Los Angeles, CA—Detroit, MI
Dallas, TX—Brownsville, TX
Washington-Dulles, VA—San Luis, AZ
Detroit, MI—Del Rio, TX
San Juan, PR—Pacific Highway, WA
Seattle, WA—Progreso, TX
Phoenix, AZ—Calais, ME
St. Louis, MO—Columbus, NM

The compliance system requires that a random number of travelers, who have already been examined by INS Officers, be selected to undergo a supplementary inspection which will further examine their admissibility into the United States. The process includes a supplementary inspection that involves a detailed review of documents, databases, and personal items. All

travelers will be randomly subject to INTEX. Based on initial pilot tests conducted to date, U.S. citizens and certain alien travelers with diplomatic status will be detained no more than 3 to 5 minutes on average. The INTEX process for all other alien travelers will take an average of 30 minutes. Depending on the traffic volume of the POE, between one and five compliance inspections will be conducted per day at each POE. Conducting between one and five INTEX exams at pilot land border and air POEs will yield data concerning about 1,800 inspections over a 30-day period. This amount of data will enable the Inspections program to quantify program effectiveness in detecting inadmissible aliens through the primary inspections process.

Dated: June 25, 1998.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 98–17456 Filed 6–29–98; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Bureau of International Labor Affairs

### Agency Information Collection Activities: Proposed Collection; Comment Request; Senior Technical Assistance Register (STAR)

**AGENCY:** Bureau of International Labor Affairs (ILAB), Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Bureau of International Labor Affairs is soliciting comments concerning the proposed extension of the Senior Technical Assistance Register (STAR). The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Written comment must be submitted by August 31, 1998.

**ADDRESSES:** Comments are to be submitted to Bureau of International Labor Affairs, Department of Labor, Room S–5006, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 219–7633. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–5613.

**FOR FURTHER INFORMATION CONTACT:** Contact Jack Luther, Office of Foreign Relations, Bureau of International Labor Affairs, U.S. Department of Labor, Room S–5006, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–7633 ext. 149. Copies of the referenced information collection request are available for inspection and will be mailed to persons who request copies by telephoning Jack Luther at (202) 219–7633 ext. 149.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Senior Technical Assistance Register (STAR) is a program of the Bureau of International Labor Affairs of the United States Department of Labor which identifies persons interested in providing advisory services to developing countries in which the Department of Labor is providing development assistance. The Register identifies specialists in the fields of labor and social affairs who would be willing to volunteer their services to the Department for short term overseas technical assistance assignments in their particular areas of expertise.

#### II. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the Senior Technical Assistance Register. Extension is necessary to continue to identify persons who would be interested in this program.

*Type of Review*: Extension.

*Agency*: Bureau of International Labor Affairs.

*Title*: Senior Technical Assistance Register (STAR).

*OMB Number*: 1225–0064.

*Affected Public*: Individuals or households.

*Total Respondents*: 10.

*Frequency*: On occasion.

*Total Responses*: 10.

*Average Time per Response*: 23 minutes.

*Estimated Total Burden Hours*: 230.

*Total Annualized capital/startup costs*: 0.

*Total initial annual costs*: (operating/maintaining systems or purchasing services): 0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: June 25, 1998.

**Sudha Haley,**

*Area Advisor, Near East, North Africa and South Asia.*

[FR Doc. 98–17348 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–28–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

June 25, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to Office of The Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is 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.

*Agency:* Pension Welfare Benefits Administration.

*Title:* Notice of Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption.

*OMB Number:* 1210–0105 (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 479.

*Total Responses:* 94,854.

*Estimated Time per Respondent:* 2 minutes.

*Total Burden Hours:* 3,162 hours.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 270,000.

*Description:* The Mental Health Parity Act of 1996 requires parity between the dollar limits imposed on mental health benefits and those imposed on medical/surgical benefits offered by group health plans and group health insurance coverage offered by issuers. Plans may be exempted from this requirement if parity would result in an increase in cost of at least one percent and participants and beneficiaries and the federal government are notified. This information collection request covers notifying participants and beneficiaries and to the federal government when a plan elects the increased cost exemption.

*Title:* Calculation and Disclosure of Documentation of Eligibility for Exemption.

*OMB Number:* 1210–0106 (extension).

*Frequency: On occasion.*

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 1,364.

*Total Responses:* 3,527.

*Estimated Time per Respondent:* 2 minutes.

*Total Burden Hours:* 118 hours.

*Total annualized capital/startup costs:* $2,420,000.

*Total annual costs (operating/maintaining systems or purchasing services):* $10,000.

*Description:* The Mental Health Parity Act of 1996 requires parity between the dollar limits imposed on mental health benefits and those imposed on medical/surgical benefits offered by group health plans and group health insurance coverage offered by issuers. Plans may be exempted from this requirement if parity would result in an increase in cost of at least one percent and participants and beneficiaries and the federal government are notified. Upon receipt of the notice, participants and beneficiaries may request and receive at no charge a summary of the information on which the exemptions were based. This information collection request covers the calculation and disclosure of information on which the exemption was based.

*Agency:* Pension and Welfare Benefits Administration.

*Title:* Notice of Group Health Plan's Use of Transition Period, and Posting Thereof.

*OMB Number:* 1210–0107 (extension).

*Frequency: On occasion.*

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 286.

*Total Responses:* 286.

*Estimated Time per Respondent:* 2 minutes.

*Total Burden Hours:* 10 hours.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $1,200.

*Description:* The Mental Health Parity Act of 1996 requires parity between the dollar limits imposed on mental health benefits and those imposed on medical/surgical benefits offered by group health plans and group health insurance coverage offered by issuers. Plans may be exempted from this requirement if parity would result in an increase in cost of at least one percent and participants and beneficiaries and the federal government are notified. Plans electing increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions must notify the federal government and post a copy of the notice in the workplace. This information collection request covers notice and posting concerning the use of the transition period.

**Todd R. Owen,**

*Departmental Clearance Officer.*

[FR Doc. 98–17347 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–29–M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Participation by OSHA Personnel in State Plan Enforcement Litigation

On January 21, 1998, the Office of the Solicitor of the Department of Labor issued a memorandum to the Assistant Secretary for the Occupational Safety and Health Administration (OSHA) concerning participation by OSHA Personnel in State Plan Enforcement Litigation. A copy of that memorandum is annexed hereto as an Appendix.

**FOR FURTHER INFORMATION CONTACT:** Miriam McD. Miller, Co-Counsel for Administrative Law, telephone number (202) 219–8188, ext. 135.

Signed at Washington, DC this 23rd day of June 1998.

**Ronald G. Whiting,**

*Deputy Solicitor of Labor for Regional Operations.*

MEMORANDUM FOR CHARLES JEFFRESS

Assistant Secretary for Occupational Safety and Health

From: Marvin Krislov, Deputy Solicitor for National Operations

Ronald Whiting, Deputy Solicitor Regional Operations

Subject: Participation by OSHA Personnel in State Plan Enforcement Litigation

This is in response to requests by OSHA for advice as to the application of the Department of Labor regulations at 29 CFR sec. 2.20 *et seq.*, to participation by employees of the Occupational Safety and Health Administration in occupational safety and health enforcement cases brought by states which administer occupational safety and health state plans approved by OSHA under section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667.

Regulations at 29 CFR § 2.20 (frequently referred to as the ''subpoena regulation'') provide that the appropriate Deputy Solicitor of Labor shall instruct Departmental employees how to respond to a request for information or testimony in connection with any litigation in which the U.S. Department of Labor is not a party. The public policies underlying the subpoena regulation include the following: (1.) conservation of governmental resources; (2.) minimizing governmental involvement in controversial matters unrelated to official business; (3.) centralization of the dissemination of information; (4.) avoiding the expenditure of government time and money in aid of private purposes. It may be of interest to you that OSHA receives by far a greater number of

testimony requests than any other agency in the Department of Labor. Without the subpoena regulations, OSHA's available personnel resources would be significantly diminished by the testimony of its employees in private civil suites.

The Office of the Solicitor recognizes, however, that requests for assistance in OSHA enforcement litigation arising under federally-approved state plans present different circumstances from cases involving private litigation, due to the partnership between federal OSHA and the states which is created under section 18 of the OSH Act. Like federal OSHA, states with federally-approved plans are responsible, among other things, for adopting and enforcing workplace safety and health standards. Standards and enforcement procedures under approved state plans are required to be ''at least as effective as'' federal standards and procedures, and in the majority of instances are nearly identical. OSHA monitors the operation of each state plan, and when certain effectiveness criteria are met, state enforcement replaces that of federal OSHA in areas covered by the approved plan. States receive federal OSHA matching grants of up to 50% of the costs of administering their approved plans. In addition, OSHA affords technical support to its sister agencies in the form of compliance officer training, laboratory services, and technical assistance in implementing new or complex standards.

In view of the shared responsibilities of OSHA and federally-approved state plans under the Act, requests for participation by Department of Labor personnel in enforcement cases arising under a federally-approved state plan, where federal personnel have directly participated by either taking part in an on-site inspection or by furnishing substantial technical assistance to the state in the preparation of its case, will generally be approved by the Deputy Solicitor under the DOL subpoena regulation. In making such decisions we will, of course, consider the extent to which such personnel would be available to provide evidence in a comparable enforcement proceeding under the federal OSH Act. Thus, for example, federal OSHA compliance and technical personnel will generally be made available in contested cases to provide testimony concerning their observations while accompanying state inspectors, or to explain technical issues on which they have produced input during the development of the state's case. Factors such as the relevance of the requested testimony, the competence of the intended witness to testify on a particular issue, and whether any privileges might apply, may affect the availability of a federal witness, just as it does in federal enforcement cases. There may be other factors which could affect approval in individual cases. The policy outlined above does not apply to the availability of witnesses to provide official statements of agency policy or render interpretations of standards during litigation; such interpretations are normally rendered by the agency only through rulemaking, letters of interpretation, in court pleadings or in other official documents.

In summary, approval will generally be granted for participation by OSHA staff in contested enforcement cases under federally-approved state plans. As discussed above we will, of course, consider the factors present in each individual case. This policy is based upon the unique federal-state enforcement scheme created by the federal OSH Act, and does not affect the availability of DOL personnel to testify in connection with any other DOL-administered program. Requests for testimony in connection with non-OSHA related litigation, or in connection with OSHA-related cases in which DOL is not a party and which do not fall within the category of cases described above, will continue to be evaluated individually under the criteria and procedures of 29 CFR 2.20 *et seq.*

[FR Doc. 98–17309 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–23–M

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 92–6

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 92–6. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before August 31, 1998.

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarify 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.

**ADDRESSES:** Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782 (this is not a toll-free number), FAX (202) 219–4745.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Prohibited Transaction Class Exemption 92–6 exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act.

### II. Current Actions

This existing collection of information should be continued because without the relief provided by this exemption, certain aspects of these transactions might be prohibited by the Employee Retirement Income Security Act. The recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. The exemption requires the pension plan to inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder-employee. If the participant elects not to purchase the contract, the relative, the employer, another plan, the owner-employee or the shareholder-employee may purchase the contract from the plan upon receipt by the plan of written consent of the participant. The disclosure

requirements of the exemption do not apply if the contract is sold to the plan participants. The disclosure requirements incorporated within the exemption are intended to protect the rights of plan participants by (1) putting them on notice of the plan's intention to sell insurance or annuity contracts under which they are insured and (2) giving them the right of first refusal to purchase such contracts.

*Type of Review:* Extension.

*Agency:* Pension and Welfare Benefits Administration.

*Title: Prohibited Transaction Class Exemption 92–6.*

*OMB Number:* 1210–0063.

*Recordkeeping:* 6 years.

*Affected Public:* Business or other for-profit, Not-for-profit institutions, Individuals.

*Total Respondents:* 7,960.

*Frequency:* On occasion.

*Total Responses:* 7,960.

*Average Time Per Response:* 10 minutes.

*Estimated Total Burden Hours:* 1,327.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter public record.

Dated: June 25, 1998.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 98–17344 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 82–63

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 82–63. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before August 31, 1998.

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarify 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.

**ADDRESSES:** Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219–4782 (this is not a toll-free number), FAX (202) 219–4745.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

Prohibited Transaction Class Exemption 82–63 allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary of securities lending services to the plan. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act.

### II. Current Actions

This existing collection of information should be continued because without the relief provided by this exemption, certain compensation arrangements for the provision of securities lending services by a plan fiduciary to an employee benefit plan would be subject to the prohibitions of section 406 of the Employee Retirement Income Security Act. The recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. The class exemption has two basic information collection requirements. The first requirement is that the compensation be paid in accordance with a written instrument authorized by a non-lending fiduciary, and the second is that the lending fiduciary furnish the authorizing fiduciary with certain information.

*Type of Review:* Extension.

*Agency:* Pension and Welfare Benefits Administration.

*Title:* Prohibited Transaction Class Exemption 82–63.

*OMB Number:* 1210–0062.

*Recordkeeping:* 6 years.

*Affected Public:* Business of other for-profit, Not-for-profit institutions, lndividuals.

*Total Respondents:* 18,245.

*Frequency:* On occasion.

*Total Responses:* 36,490.

*Average Time Per Response:* 5 minutes.

*Estimated Total Burden Hours:* 3,041.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 1998.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 98–17345 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Exemption 96–62

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork

Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Exemption 96–62, the expedited process for approval of exemptions. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the contract section of this notice.

**DATES:** Written comments must be submitted on or before August 31, 1998.

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782 (not a toll-free number), FAX (202) 219–4745.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the Secretary of Labor may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA, and directs the Secretary to establish an exemption procedure with respect to such provisions. On July 31, 1996, the Department published Prohibited Transaction Exemption 96–62, pursuant to the exemption procedure set forth in 29 CFR 2570, subpart B. This class exemption permits a plan to engage in a transaction which might otherwise be prohibited following a demonstration to the Department that the transaction: (1) is substantially similar to those described in at least two prior individual exemptions granted by the Department, and (2) presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. Under the class exemption, a party may proceed with a transaction in as little as 78 days from the acknowledgement of receipt by the Department of a written submission filed in accordance with the terms of the class exemption. This ICR includes the information required to be included in this submission, and the notice to interested parties which is required under the class exemption.

## II. Current Action

Beacause this ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA, the Department intends to request an extension of this ICR beyond its September 30, 1998 expiration date.

*Type of Review:* Extension.

*Agency:* Department of Labor, Pension and Welfare Benefits Administration.

*Title:* Prohibited Transaction Exemption 96–62.

*OMB Number:* 1210–0098.

*Affected Public:* Business or other for-profit, Not-for-profit institutions, Individuals.

*Total Respondents:* 45.

*Frequency:* On occasion.

*Estimated Total Burden Hours:* 1.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 1998.

**Gerald B. Lindrew,**

*Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.*

[FR Doc. 98–17346 Filed 6–9–98; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (98–083)]**

## Notice of Agency Report Forms Under OMB Review

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted on or before August 31, 1998.

**ADDRESSES:** All comments should be addressed to Ms. Sue McDonald, Mail Code GS4, Lyndon B. Johnson Space Center, Houston, TX 77058.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

*Title:* Radioactive Material Transfer Receipt.

*OMB Number:* 2700–0007.

*Type of review:* Extension.

*Need and Uses:* Federal law requires that Johnson Space Center keep records of each radioactive material transfer.

*Affected Public:* Business or other for-profit, Federal Government, State, Local or Tribal Government.

*Number of Respondents:* 50.

*Responses Per Respondent:* 2.

*Annual Responses:* 100.

*Hours Per Request:* ½ hr.

*Annual Burden Hours:* 58.

*Frequency of Report:* On occasion.

**Donald J. Andreotta,**

*Deputy Chief Information Officer (Operations), Office of the Administrator.*

[FR Doc. 98–17280 Filed 6–29–98; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 98–084]**

## Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Prospective Patent License.

**SUMMARY:** NASA hereby gives notice that IDEA, LLC of Beltsville, MD has applied for an exclusive license to practice the invention described and claimed in NASA Case No. KSC–11809, entitled ''Detector for Particle Surface Contamination,'' which is assigned to

the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

**DATE:** Responses to this notice must be received by August 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Beth Vrioni, Patent Counsel, Kennedy Space Center, Mail Code MM–E, John F. Kennedy Space Center, FL 32899.

Dated: June 22, 1998.

**Edward A. Frankle,**

*General Counsel*

[FR Doc. 98–17281 Filed 6–29–98; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meeting

**TIME AND DATE:** 2:00 p.m., Monday, June 29, 1998.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Two Personnel Actions. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business requires that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 98–17470 Filed 6–26–98; 11:10 am]

BILLING CODE 7535–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

### Crystal River Unit 3; 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 (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–72 issued to Florida Power Corporation (the licensee), for operation of Crystal River Unit 3, located in Citrus County, Florida.

The proposed amendment would allow operation with a number of indications previously identified as tube end anomalies (TEA) and multiple tube end anomalies (MEA) in the Crystal River Unit 3 (CR–3) Once Through Steam Generator (OTSG) tubes. The duration of the proposed license amendment would be until CR–3's next refueling outage, currently scheduled for fall 1999. This proposed change may be necessary due to the potential condition of noncompliance with CR–3 Improved Technical Specification 5.6.2.10.4.b. Such a condition may result from confirmation of an ongoing re-analysis of eddy current testing (ECT) data, of indications previously identified as TEAs and MEAs in the upper roll expansion of the OTSG upper tube sheet, as now being within the pressure boundary of the tubes.

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.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine 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:

This change does not involve a significant hazards consideration for the following reasons:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

This evaluation addresses the potential effects of operating with TEAs and MEAs within the pressure boundary cladding region. The indications remaining in service are within the upper end of the tube pressure boundary. Two accidents analyzed in the SAR [safety analysis report] must be evaluated: Steam Generator Tube Rupture and Main Steam Line Break.

The steam generator tube rupture accident assumptions bound the possible effects of leaving these indications in service. A complete circumferential severance of a tube is assumed in the accident scenario. The location of these indications in the upper tubesheet precludes a tube rupture from occurring (the tubes are restrained by the tubesheet). Additionally, in the event of a complete circumferential severance, the tube will not retract from the tubesheet. Thus, the probability of occurrence of this accident is not increased by leaving these indications in service.

The main steam line break accident is not initiated by the condition of the tubing. However, an assumption of one gpm primary-to-secondary leakage through the OTSG is assumed in the MSLB [main steam line break] accident analysis. Calculated cumulative leakage, assuming all of the indications are leaking, is determined to be well below one gpm, thus the accident analysis initial assumptions bound the existing condition of the OTSGs. Thus, it is concluded that the probability of occurrence of a main steam line break is not increased by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes or accident scenarios are created by allowing operation with TEAs and MEAs extending within the tubes' pressure boundary. The TEAs and MEAs remaining in service are within the upper end of the tube pressure boundary and even in the event of a complete circumferential severance, the tube will not retract from the tubesheet. Therefore, the tubesheet hoop effect will still act to minimize leakage. The postulated potential leakage generated from allowing these indications to remain in service is bounded by the CR–3 MSLB scenario. The MSLB scenario has been thoroughly evaluated and the potential damage to the steam generator tubes is not increased. This change does not increase the risk of a plant trip or challenge other safety systems. Therefore, this change does not create a possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety.

ITS Bases 3.4.12 contains relevant information pertaining to the limitations on RCS [reactor coolant system] leakage. These Bases discuss the one gpm primary-to-secondary leakage assumed for a main steam line break accident as well as the steam generator tube rupture accident. As discussed, the maximum calculated accident leakage, assuming all of these indications leak, is well below one gpm. Therefore, the margin of safety as defined in the ITS bases is not significantly reduced.

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 14 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 14-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 14-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 and Directives Branch, Division of Administrative 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 6D59, 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 July 30, 1998 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 34428. 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 the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, 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, or 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 June 18, 1998, 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 23rd day of June 1998.

For the Nuclear Regulatory Commission.

**Leonard A. Wiens,**

*Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–17354 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–244]**

## Rochester Gas and Electric 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 (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–18 issued to Rochester Gas and Electric Corporation (the licensee) for operation of the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment would revise the Ginna Station Improved Technical Specifications (ITS) to reflect a planned modification to the spent fuel pool (SFP) storage racks. Specifications associated with SFP boron concentration, fuel assembly storage, and maximum limit on the number of fuel assemblies which can be stored in the SFP would be revised.

The Commission had previously issued a Notice of Consideration of Issuance of an Amendment published in the **Federal Register** on May 12, 1998 (63 FR 26213). This notice contained the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination, and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest might be affected to petition for leave to intervene.

Due to oversight, the May 12, 1998, Notice of Consideration of Amendment did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by the Commission's regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined below, the Commission's rules in 10 CFR Part 2, Subpart G continue to govern the filing of requests for a hearing and petitions to intervene, as well as the admission of contentions.) The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By July 30, 1998, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such 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 invoke the hybrid hearing procedures and to participate as a party in such 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 Rochester Public Library, 115 South Avenue, Rochester, New York 14610. If a request for a hearing and petition for leave to intervene seeking to invoke the hybrid hearing procedures in accordance with this notice 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 petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing and petitions for leave to intervene that do not seek to invoke the hybrid procedures are not authorized by this notice and would be considered untimely.

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 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.

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 and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing and a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or 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 Mr. Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., attorney for the licensee.

Untimely 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 March 31, 1997, as supplemented June 18, 1997, October 10, 1997, October 20, 1997, November 11, 1997, December 22, 1997, January 15, 1998, January 27, 1998, March 30, 1998, April 23, 1998, April 27, 1998, May 8, 1998, and May 22, 1998, which are 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 Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 24th day of June 1998.

For the Nuclear Regulatory Commission.

**Guy S. Vissing,**

*Senior Project Manager Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–17353 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–321 and 50–366 and License Nos. DPR–57 and NPF–5]**

## Southern Nuclear Operating Company Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Confirmatory Order Modifying License; Effective Immediately

### I

Southern Nuclear Operating Company, Inc. (SNC/the licensee) is the holder of Facility Operating License Nos. DPR–57 and NPF–5, which authorizes operation of Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

### II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, ''Thermo-Lag 330–1 Fire Barriers'' and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years.

SNC has committed to complete final implementation of Thermo-Lag 330–1 fire barriers corrective actions at both Hatch units by startup of Unit 2 from the fall 1998 refueling outage. The NRC staff has concluded that this schedule is reasonable based on the amount of installed Thermo-Lag and the complexity of the plant-specific fire barrier configurations and issues. In order to remove compensatory measures, such as fire watches, it has been determined the resolution of the Thermo-Lag corrective actions by SNC must be completed in accordance with the current SNC schedule. By letter dated April 29, 1998, the NRC staff notified SNC of its plan to incorporate SNC's schedule commitment into a requirement by issuance of an order and requested consent from the licensee. By letter dated June 2, 1998, the licensee provided its consent to issuance of a Confirmatory Order.

**III**

The licensee's commitment as set forth in its letter of June 2, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the licensee's commitment in its June 2, 1998, letter be confirmed by this Order. The licensee has agreed to this action. Based on the above, and the licensee's consent, this Order is immediately effective upon issuance.

**IV**

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered*, effective immediately, that:

SNC shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Plant Hatch Units 1 and 2, described in the SNC submittal to the NRC dated December 13, 1994, March 28, 1995, and May 11, 1998 (HL–5632), by startup of Unit 2 from the fall 1998 refueling outage.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the licensee of good cause.

**V**

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. 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 Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attention: Rulemaking and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region II, P.O. Box 2257, Atlanta, Georgia 30303–3415, and to the licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 24th day of June 1998.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–17351 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 102nd meeting on July 20–22, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

*Monday, July 20, 1998—8:30 A.M. until 6:00 p.m.*

*Tuesday, July 21, 1998—8:30 A.M. until 6:00 p.m.*

*Wednesday, July 22, 1998—8:30 A.M. until 4:00 p.m.*

**A. Planning For and Meeting With the Nuclear Regulatory Commission**

The Committee will prepare for and meet with the Commission to discuss items of mutual interest. Topics will include the ACRS Plans and Priorities list and past Committee reports on the interim guidance in support of the final rule on radiological criteria for license termination, NRC waste-related research, and risk-informed, performance-based regulation. Observations will also be presented on the recent two-day working group discussions on the near-field environment and the performance of engineered barriers in the Yucca Mountain Repository. The Committee is currently scheduled to meet with the Commission on July 21, 1998 at 1:30 p.m.

**B. Yucca Mountain Regulatory Framework**

The Committee will be briefed by the staff on the status and content of the site-specific regulatory framework to be used to judge the acceptability of DOE's license application for disposal of high-level waste at the proposed Yucca Mountain, NV site. Topics might include a discussion of the proposed relevant 10 CFR Part 63, the Issue Resolution Status Report (IRSR) on Total System Performance Assessment (TSPA) and a description of important measures developed by the staff for application to the proposed repository as well as other waste disposal facilities.

**C. Generic LLW Disposal Facility Criticality Issues**

The Committee will review recent staff papers on the potential for criticality and the need to continue research on post-disposal criticality at low-level radioactive waste disposal facilities.

**D. Development of a Standard Review Plan (SRP) for Decommissioning**

The Committee will be briefed by the staff on its plans to develop an SRP for use by the NRC in reviewing and evaluating nuclear facility decommissioning plans.

**E. Meeting With NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards**

The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

**F. Preparation of ACNW Reports**

The Committee will discuss planned reports, including risk-informed, performance-based regulation, waste related research, regulatory guides dealing with decommissioning, and other topics discussed during this and previous meetings as the need arises.

**G. Committee Activities/Future Agenda**

The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

**H. Miscellaneous**

The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings was published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Acting Chief, Nuclear Waste Branch, Mr. Howard J. Larson, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Acting Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Howard J. Larson, Acting Chief, Nuclear Waste Branch (telephone 301/415–6805), between 8:00 a.m. and 5:00 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: June 24, 1998.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 98–17355 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of June 29, July 6, 13, and 20, 1998.

**PLACE:** Commissioner's Conference Room 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of June 29**

*Tuesday, June 30*

10:00 a.m

Meeting with Commonwealth Edison (Public Meeting) (Contact: Stewart Richards, 301–415–1395)

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

2:00 p.m.

Briefing on Performance Assessment Progress in HLW, LLW, and SDMP (Public Meeting) (Contact: Norman Eisenberg, 301–415–7285)

**Week of July 6—Tentative**

*Thursday, July 9*

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

*Week of July 13—Tentative*

*Friday, July 17*

11:30 a.m.

Affirmation Section (Public Meeting) (if needed)

**Week of July 20—Tentative**

*Tuesday, July 21*

1:30 p.m.

Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

3:00 a.m.

Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov.SECY.smj.schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: June 25, 1998.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 98–17534 Filed 6–26–98; 1:51 pm]

BILLING CODE 7590–01–M

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## NUCLEAR REGULATORY COMMISSION

### Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

| State | Part 71 | Part 73 |
|---|---|---|
| ALABAMA | Col. L. N. Hagan, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511, (334) 242–4378. | Same. |
| ALASKA | Doug Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643, (907) 451–2172. | Same. |
| ARIZONA | Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, 24 hours: (602) 223–2212. | Same. |
| ARKANSAS | David D. Snellings, Jr., Director, Division of Radiation Control and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136. | Same. |
| CALIFORNIA | Sgt. Meg Planka, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298–0001, (916) 327–3310, 24 hours: (916) 445–2211. | Same. |
| COLORADO | Captain Allan M. Turner, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5865, (303) 239–4546, 24 hours: (303) 239–4501. | Same. |
| CONNECTICUT | Commissioner Arthur J. Rocque, Jr., Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127, (860) 424–3001, 24 hours: (860) 424–3333. | Same. |
| DELAWARE | Karen L. Johnson, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 739–4321, 24 hours: (302) 739–5851. | Same. |
| FLORIDA | Harlan Keaton, Manager, Bureau of Radiation Control, Environmental Radiation Control, Department of Health, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2095. | Same. |
| GEORGIA | Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354, (404) 559–6600. | Same. |
| HAWAII | Bruce S. Anderson, Ph.D., Deputy Director for Environmental Health, State of Hawaii, Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 586–4424. | Same. |
| IDAHO | Captain David C. Rich, Department of Law Enforcement, Idaho State Police, P.O. Box 700, Meridian, ID 83680–0700, (208) 884–7206, 24 hours: (208) 334–2900. | Same. |
| ILLINOIS | Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 Hours: (217) 785–9900. | Same. |
| INDIANA | Melvin J. Carraway, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248. | Same. |
| IOWA | Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319–0113, (515) 281–3231. | Same. |
| KANSAS | Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW. Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1409, 24 hours: (785) 296–3176. | Same. |
| KENTUCKY | John A. Volpe, Ph.D., Manager, Radiation and Toxic Agents Section, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 40621–0001, (502) 564–3700. | Same. |
| LOUISIANA | Captain Joseph T. Booth, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21), Baton Rouge, LA 70896–6614, (504) 925–6113. | Same. |
| MAINE | Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624–7000. | Same. |
| MARYLAND | First Sgt. Wellington Gray, Maryland State Police, Communication Services Division, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4208, 24 hours: (410) 653–4200. | Same. |
| MASSACHUSETTS | Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 305 South Street, 7th Floor, Jamaica Plain, MA 02130, (617) 727–6214. | Same. |
| MICHIGAN | Captain Stephen D. Madden, Commanding Officer, Special Operations Division, Michigan State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 336–6263, 24 hours: (517) 336–6100. | Same. |
| MINNESOTA | John R. Kerr, Assistant Director, Planning Branch, Division of Emergency Management, Department of Public Safety, B5—State Capitol, 75 Constitution Avenue, St. Paul, MN 55155, (612) 296–0481, 24 hours: (612) 649–5451. | Same. |
| MISSISSIPPI | James E. Maher, Director, Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501, (601) 352–9100. | Same. |
| MISSOURI | Jerry B. Uhlmann, Director, Emergency Management Agency, P.O. Box 116, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748. | Same. |
| MONTANA | George Eicholtz, Coordinator, Radiological Health Program, Montana DPHHS, Licensure Bureau, P.O. Box 202951, Helena, MT 59620–2951, (406) 444–5246.. | [1] |
| NEBRASKA | Major Bryan J. Tuma, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907, (402) 479–4950, 24 hours: (402) 471–4545. | Same. |
| NEVADA | Stanley R. Marshall, Supervisor, Radiological Health Section, Health Division, Department of Human Resources, 1179 Fairview Drive, Suite 102, Carson City, NV 89701–5405, (702) 687–5394, 24 hours: (702) 687–5300. | Same. |
| NEW HAMPSHIRE | Richard M. Flynn, Commissioner, New Hampshire Department of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305, (603) 271–2791, (603) 271–3636 (24 hours). | Same. |
| NEW JERSEY | Kent Tosch, Manager, Bureau of Nuclear Engineering, Department of Environmental Protection, CN 415, Trenton, NJ 08625–0415, (609) 984–7701. | Same. |
| NEW MEXICO | Max D. Johnson, Bureau Chief, Technological Hazards Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504–1628, (505) 476–9620, 24 hours: (505) 827–9126. | Same. |

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|---|---|---|
| NEW YORK | Edward F. Jacoby, Jr., Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251, (518) 457–2222. | Same. |
| NORTH CAROLINA | Line Sgt. Mark Dalton, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 512 N. Salisbury St., P.O. Box 29590, Raleigh, NC 27626–0590, (919) 733–5282, After hours: (919) 733–3861. | Same. |
| NORTH DAKOTA | Dana K. Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506–5520, (701) 328–5188, After hours: (701) 328–2121. | Same. |
| OHIO | James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2855 W. Dublin-Granville Road, Columbus, OH 43235–2206, (614) 889–7150. | Same. |
| OKLAHOMA | Bob A. Ricks, Commissioner, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–2001, 24 hours: (405) 425–2424. | Same. |
| OREGON | David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy 625 Marion Street, NE, Salem, OR 97310, (503) 378–6469. | Same. |
| PENNSYLVANIA | John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA, 17105–3321, (717) 651–2001. | Same. |
| RHODE ISLAND | William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277–3500; ext. 150. | Same. |
| SOUTH CAROLINA | Virgil R. Autry, Director, Division of Radioactive Waste Management, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4244, Emergency: (803) 253–6488. | Same. |
| SOUTH DAKOTA | Gary N. Whitney, Director, Division of Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501–5060, (605) 773–3231. | Same. |
| TENNESSEE | John D. White, Jr., Director, Tennessee Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204–1504, (615) 741–0001, After hours:, (Inside TN) 1–800–262–3300, (Outside TN) 1–800–258–3300. | Same. |
| TEXAS | Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 834–6688. | ([2]) |
| UTAH | William J. Sinclair, Director, Division of Radiation Control 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4250, After hours: (801) 536–4123. | Same. |
| VERMONT | Lieutenant Col. John H. Sinclair, Director, Division of State Police, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671–2101, (802) 244–7345. | Same. |
| VIRGINIA | L. Ralph Jones, Jr., Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674–2400. | Same. |
| WASHINGTON | Lieutenant Gail R. Otto, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504–2600, (360) 753–0565, After hours: (253) 536–6210 (ext. 0). | Same. |
| WEST VIRGINIA | Colonel Gary L. Edgell, Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111. | Same. |
| WISCONSIN | Steven D. Sell, Administrator, Wisconsin Division of Emergency Management, P.O. Box 7865, Madison, WI 53707–7865, (608) 242–3232. | Same. |
| WYOMING | Captain L.S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82003–1708, (307) 777–4317, 24 hours: (307) 777–4321. | Same. |
| DISTRICT OF COLUMBIA | Norma J. Stewart, Program Manager, Pharmaceutical, Radiological, and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW., Washington, DC 20001, (202) 727–7218, After hours: (202) 727–6161. | Same. |
| PUERTO RICO | Hector Russe Martinez, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (787) 767–8056 or (787) 767–8181. | Same. |
| GUAM | Jesus T. Salas, Administrator, Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921, (671) 475–1658/9. | Same. |
| VIRGIN ISLANDS | Roy L. Schneider, Governor, Governor's Office, 21–22 Kongens Gade, St. Thomas, Virgin Islands 00802, (809) 774–0001. | Same. |
| AMERICAN SAMOA | Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304. | Same. |
| COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. | Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Capitol Hill, Saipan, MP 96950, (670) 322–9830 or (670) 322–9834. | Same. |

[1] Jim Greene, Administrator, Disaster & Emergency Services, P.O. Box 4789, Helena, MT 59604, (406) 841–3911, same.

[2] Col. Dudley M. Thomas, Director, Texas Department of Public Safety, Attn: EMS Tech. Hazards, P.O. Box 4087, Austin, TX 78773–0001, (512) 424–2429, (512) 424–2277 (24 hrs).

Questions regarding this matter should be directed to Spiros Droggitis, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (INTERNET Address: SCD@NRC.GOV) or at (301) 415–2367.

Dated at Rockville, Maryland, this 18th day of June 1998.

For the Nuclear Regulatory Commission.

**Richard L. Bangart,**

*Director, Office of State Programs.*

[FR Doc. 98–16912 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

## SECUTITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 23265; 812–10936]**

## Bond Fund Series, et al.; Notice of Application

June 23, 1998.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption for section 12(d)(1)(G)(i)(II).

**SUMMARY OF THE APPLICATION:** Applicants seek an order that would permit a fund of funds relying on section 12(d)(1)(G) of the Act to make investments in securities and other instruments.

**APPLICANTS:** Bond Fund Series, Centennial America Fund, L.P., Centennial California Tax Exempt Trust, Centennial Government Trust, Centennial Money Market Trust, Centennial New York Tax Exempt Trust, Centennial Tax Exempt Trust, Oppenheimer California Municipal Fund, Oppenheimer Capital Appreciation Fund, Oppenheimer Cash Reserves, Oppenheimer Champion Income Fund, Oppenheimer Core Equity Fund, Oppenheimer Developing Markets Fund, Oppenheimer Discovery Fund, Oppenheimer Enterprise Fund, Oppenheimer Equity Income Fund, Oppenheimer Global Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer Gold & Special Minerals Fund, Oppenheimer Growth Fund, Oppenheimer High Yield Fund, Oppenheimer Integrity Funds, Oppenheimer International Bond Fund, Oppenheimer International Growth Fund, Oppenheimer International Small Company Fund, Oppenheimer Large Cap Growth Fund, Oppenheimer Large Cap Value Fund, Oppenheimer Limited-Term Government Fund, Oppenheimer Main Street Funds, Inc.®, Oppenheimer MidCap Fund, Oppenheimer Money Market Fund, Inc., Oppenheimer Mult-State Municipal Trust, Oppenheimer Multiple Strategies Fund, Oppenheimer Municipal Bond Fund, Oppenheimer Municipal Fund, Oppenheimer New York Municipal Fund, Oppenheimer Quest Capital Value Fund, Inc., Oppenheimer Quest for Value Funds, Oppenheimer Quest Global Value Fund, Inc., Oppenheimer Quest Value Fund, Inc., Oppenheimer Real Asset Fund, Oppenheimer Series Fund Inc., Oppenheimer Stable Value Fund, Oppenheimer Strategic Income Fund, Oppenheimer Total Return Fund, Inc., Oppenheimer U.S. Government Trust, Oppenheimer Variable Account Funds, Oppenheimer World Bond Fund, Panorama Series Fund, Inc., Rochester Fund Municipals, and Rechester Portfolio Series (Collectively, the ''Existing Funds''), Oppenheimer Funds, Inc. (''OFI''), Oppenheimer Real Asset Management (''ORAM''), Centennial Asset Management Corporation (''CAMC'') (collectively, the ''Advisers''), and Oppenheimer Funds Distributor, Inc. (''OFDI''), including each applicant's successor in interest.[1].

**FILING DATES:** The application was filed on December 30, 1997, and amended on March 10, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC order a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicants with a copy of the request, personally or mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interests, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549. Applicants, Two World Trade Center, 34th Floor, New York, New York 10048–0203.

**FOR FURTHER INFORMATION CONTACT:** J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

### Applicants' Representations

1. Each of the Existing Funds is organized as either a Maryland corporation, a Massachusetts business trust, or a Delaware limited partnership, and is an open-end management investment company registered under the Act. Several of the Existing Funds are organized as series companies. Applicants request that the relief apply to any registered open-end management investment company or series thereof which in the future is part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Existing Funds, and for which OFDI, CAMC, or any entity controlled by OFDI or CAMC, acts as principal underwriter, or for which OFI, ORAM, CAMC, or any entity controlled by OFI, ORAM, or CAMC, acts as investment adviser (together with any future series of Existing Funds, the ''New Funds''). [2] The New Funds and the Existing Funds are collectively referred to as the ''Funds'' and individually as a ''Fund.''

2. The Funds will be designated as either Mixed Funds or Core Funds. Each Mixed Fund will invest in a combination of Core Funds and, pursuant to the relief requested in the application, in other securities that are consistent with the Fund's stated investment objectives and policies (''Additional Portfolio Investments''). Applicants want to have the flexibility to invest in Additional Portfolio Investments so that the Mixed Funds can take advantage of available investment opportunities as well as make investments in the Core Funds. OFI or one of its subsidiaries, CAMC, or ORAM, each an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to the Funds.

### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such

[1] ''Successor in interest'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All existing investment companies that currently intend to rely on the requested order named as applicants, and any New Fund that subsequently relies on the order will comply with the terms and conditions of the application.

securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) the acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G).

3. Applicants state that the investment by the Mixed Funds in the Core Funds will comply with section 12(d)(1)(G) of the Act, with the exception of the requirement in section 12(d)(1)(G)(i)(II) that the Mixed Funds limit their other investments to Government securities and short-term paper.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from section 12(d)(1)(G)(i)(II) to permit the Mixed Funds to invest in Additional Portfolio Investments as described in the application. Applicants believe that the Mixed Funds' proposed investments in Additional Portfolio Investments do not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

## Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Mixed Funds from investing in the Additional Portfolio Investments as described in the application.

2. Before approving any investment advisory contract for a Mixed Fund, the directors of the Mixed Fund, including a majority of the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that the advisory fee, if any, charged under the contract is based on services provided that are in addition to, rather than duplicative of, services provided under the contracts of any Core Fund in which the Mixed Fund may invest.These findings and their basis will be recorded fully in the minute books of the Mixed Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–17295 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 23268; 812–11064]**

## The Emerging Germany Fund Inc.; Notice of Application

June 24, 1998.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

*Summary of Application:* Applicant, The Emerging Germany Fund, Inc., a registered closed-end management investment company, requests an order to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for quarterly distributions of a fixed percentage of its net asset value.

*Filing Date:* The application was filed on March 13, 1998 and amended on May 28, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 20, 1998 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Four Embarcadero Center, San Francisco, CA 94111–4189, Attention: Robert J. Goldstein.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW., Washington, DC 20549 (tel. 202–942–8090).

## Applicant's Representations

1. Applicant is registered under the Act as a closed-end management investment company and is organized as a Maryland Corporation. Applicant's investment objective is long-term capital appreciation, which applicant seeks to obtain by investing primarily in equity and equity-linked securities of German companies. Applicant's investment adviser is Dresdner RCM Global Investors LLC, an investment adviser registered under the Investment Advisers Act of 1940.

2. On February 12, 1998, applicant's board of directors adopted a distribution policy with respect to applicant's common stock that calls for quarterly distributions of approximately 2.5% of applicant's average weekly net asset value, for an annual total of at least 10% of its average weekly net asset value (the ''Distribution Policy'').

3. Applicant states that the Distribution Policy will provide a steady cash flow to its shareholders, and, during periods when its per share net asset value is increasing, a means for shareholders to receive on a regular basis some of the appreciation in value of their shares. Applicant also believes that the Distribution Policy plays a role in reducing the discount from net asset value at which applicant's shares typically trade.

4. Applicant requests relief to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect the Distribution Policy.

**Applicant's Legal Analysis**

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions that applicant may make with respect to any one year, would prevent the normal operation of its Distribution Policy whenever applicant's realized net long-term gains in any year exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. As a result, applicant states that it must fund these quarterly distributions with returns on capital (to the extent net investment income and realized short-term capital gains are insufficient to cover a quarterly distribution). Applicant further asserts that the long-term capital gains in excess of the fixed quarterly distributions permitted by rule 19b–1 then must either be added as an ''extra'' to one of the permitted capital gains distributions, thus exceeding the total annual amount called for by the Distribution Policy, or retained by applicant (with applicant paying taxes on the retained amounts). Applicant asserts that the application of rule 19b–1 to its Distribution Policy may cause anomalous results and create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include such gains.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of these concerns is that shareholders might not be able to distinguish frequent distributions of capital gains and dividends from investment income. Applicant states that the Distribution Policy has been disclosed in a special letter to its shareholders, and applicant will disclose the Policy in future quarterly and annual reports to shareholders. Applicant further states that, in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (net investment income, net realized capital gain or return of capital) will accompany each distribution (or the conformation of the reinvestment under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each quarterly distribution received during the year will be disclosed to each shareholder of applicant who received distributions during the year (including shareholders who shares during the year). Applicant expects to include disclosure describing the amount and source of distributions under the Distribution Policy on a cumulative basis for the full fiscal year either in (i) the statement showing the amount and source of the quarterly distribution paid in the last quarter of each fiscal year, or (ii) in a separate statement mailed to shareholders shortly after year-end.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend'') where the distribution would result in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares.

5. Applicant states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. Applicant asserts, however, that it will continue to make quarterly distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested relief satisfies this standard.

**Applicant's Condition**

Applicant agrees that any Commission order granted the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than: (i) a non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–17385 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–23269; File No. 812–11092]**

## Variable Insurance Products Fund, et al.

June 24, 1998.

**AGENCY:** Securities and Exchange Commission (''SEC'' or the ''Commission'').

**ACTION:** Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from Sections 9(a), 13(a), 15(a) and 15(d) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an amended order to permit shares of the Variable Insurance Products Fund, Variable Insurance Products Fund II, and Variable Insurance Products Fund III (together, the ''Funds''), as well as shares of any future funds for which Fidelity Management & Research Company (''FMR'') or any affiliate of FMR serves as the investment manager, advisor, principal underwriter, or sponsor (''Future Funds'') to be issued to and held by qualified pension and retirement plans outside the Separate account context (''Qualified Plans'').

**APPLICANTS:** Variable Insurance Products Fund (''VIPF''), Variable Insurance Products Fund II (''VIPF II''), and Variable Insurance Products Fund III (''VIPF III'').

**FILING DATE:** The application was filed on March 24, 1998.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 20, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 82 Devonshire Street, N7A, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Michael B. Koffler, Attorney, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

## Applicants' Representations

1. Each of the Funds is a Massachusetts business trust and is registered under the 1940 Act as an open-end diversified management investment company. VIPF and VIPF II presently consist of five portfolios each, and VIPF III currently consists of three portfolios. Additional portfolios may be added in the future. The Funds currently serve as the underlying investment vehicle for separate accounts supporting variable annuity contracts and variable life insurance policies issued by various insurance companies.

2. FMR, an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser for each of the Funds.

3. The Commission previously granted exemptive relief (the ''Original Orders'') to the extent necessary to permit shares of the Funds and Future Funds to be sold to and held by separate accounts of both affiliated and unaffiliated life insurance companies in support of variable annuity contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, ''Variable Contracts''). Separate accounts owning shares of the Funds and their insurance company depositors are referred to herein as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.''

5. The Original Orders do not expressly address the sale of shares of the Funds or any Future Funds to Qualified Plans. Applicants propose that the Funds and any Future Funds be permitted to offer and sell shares of the Funds to Qualified Plans.

## Applicants' Legal Analysis

1. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the 1940 Act, exempting scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) (and any comparable rule) thereunder, respectively, to the extent necessary to permit shares of the Funds and any Future Funds to be sold to and held by Qualified Plans.

2. Section 6(c) of the 1940 Act provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available, however, only where the management investment company underlying the separate account (''underlying fund'') offers its shares exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company. Therefore, Rule 6e–2 does not permit either mixed funding or shared funding because the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. Rule 6e–2(b)(15) also does not permit the sale of shares of an underlying fund to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) also provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T) permits mixed funding but does not permit shared funding and also does not permit the sale of shares of an underlying fund to Qualified Plans.

5. Applicants note that if the Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

6. Applicants state that changes in the federal tax law have created the opportunity for each Fund to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying variable Contracts. Treasury Regulations provide that, to meet the diversification requirements, all of the

beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying portfolio investment company.

9. Applicants state that the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

10. Applicants maintain that the relief previously granted from Section 9(a) in the Original Orders will in no way be affected by the proposed sale of shares of the Funds to Qualified Plans. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which Qualified Plans use such Funds. Applicants maintain that applying the requirements of Section 9(a) because of investment by Qualified Plans would not serve any regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act.

11. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

12. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through the voting rights to plan participants. Applicable law expressly reserves voting rights to certain specified persons. Under Section 403(a) of the Employment Retirement Income Security Act (''ERISA''), shares of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) when the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two above exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fudiciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Qualified Plan investors with respect to voting of the respective Fund's shares. Accordingly, Applicants state that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass through voting privileges.

13. Even if a Qualified Plan were to hold a controlling interest in one of the Funds, Applicants believe that such control would not disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or share funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. Applicants maintain that the purchase of shares of the Funds by Qualified Plans that provide voting right does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that they do not believe that the sale of the shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants state that there is very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners. Applicants note that the Treasury Regulations specifically permit qualified pension or retirement plans and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or revenue rulings thereunder, present any inherent conflicts of interest.

16. Applicants not that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan.

17. Applicants maintain that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans. In connection with any meeting of shareholders, the Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

18. Applicants have concluded that even if there should arise issues with respect to a state insurance commissioner's veto powers over investment objectives where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds. Applicants note that state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

19. Applicants also state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

20. Applicants state that the sale of shares of the Funds to Qualified Plans in addition to separate accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by the Funds. This may benefit variable contractowners by promoting economies of scale, by permitting safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

21. Applicants assert that, regardless of the type of shareholder in each Fund, FMR is or would be contractually and otherwise obligated to manage each Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board of Directors of such Fund (the ''Board''). FMR works with a pool of money and (except in a few instances where this may be required in order to comply with state insurance laws) does not take into account the identity of the shareholders. Thus, each Fund will be managed in the same manner as any other mutual fund. Applicants therefore see no significant legal impediment to permitting the sale of shares of the Funds to Qualified Plans.

**Conditions for Relief**

Applicants consent to the following conditions:

1. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a portfolio (or class thereof) of a Fund (a ''Participant'') shall report any potential or existing conflicts to the applicable Board. A Participant will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. If pass-through voting is applicable, this includes, but is not limited to, an obligation by each Particpant to inform the Board whenever it has determined to disregard the voting instructions of its participants. The responsibility to report such conflicts and information, and to assist the Board will be the contractual obligations of the Participant under its agreement governing participation in the Fund and such agreement shall provide that such responsibilities will be carried out with a view only to the interests of participants in such Qualified Plan.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the contractowners of all the separate accounts investing in the Fund and participants in Qualified Plans investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable life insurance contractowners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. If it is determined by a majority of a Board of a Fund, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Qualified Plans shall, at their expense and to the extent reasonably practicable (as determined

by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the Qualified Plans from the Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of a Fund; and (b) establishing a new registered management investment company or managed separate account.

4. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard its participants' voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of participants in such Qualified Plans. For purposes of this condition, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund, or FMR be required to establish a new funding medium for any Variable Contract. Further, no Qualified Plan shall be required by this condition to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan mades such decision without a vote of its participants.

5. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be make known promptly and in writing to all Qualified Plans.

6. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. All reports of potential or existing conflicts received by a Board and all Board actions with regard to determining the existence of a conflict of interest, notifying Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts on a mixed and shared basis and to Qualified Plans; (b) material irreconcilable conflicts may arise between the interests of various contractowners participating in the Fund and the interests of Qualified Plans investing in the Fund; and (c) the Board of such Fund will monitor events in order to identify the existence of any material conflict and determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. No less than annually, the Participants shall submit to each Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

10. None of the Funds will accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of a portfolio (or class thereof) of such Fund unless such Qualified Plan executes a fund participation agreement with the relevant Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute a shareholder participation agreement containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

## Conclusion

For the reasons summarized above, Applicants asserts that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–17386 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40111); File No. SR–CBOE–97–41]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Definition of Stop Orders

June 23, 1998.

### I. Introduction

On August 25, 1997, the Chicago Board Options Exchange, Inc. (''CBOE or Exchange''), filed with the Securities and Exchange Commission (''SEC or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 6.53 (''Rule''), governing the definition of option stop orders, to clarify that option stop orders on the CBOE are triggered when the option contract reaches a specified price ''on the CBOE floor.'' The proposed rule change was published for comment in Securities Exchange Act Release No. 39100 (September 19, 1997), 62 FR 50644 (September 26, 1997). No comments were received on the proposal.

On May 26, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] This order approves the proposal and approves

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Stephanie C. Mullins, Attorney, CBOE, to Mike Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated May 26, 1998 (''Amendment No. 1''). In Amendment No. 1, the CBOE amends the filing by clarifying that: (1) an option stop order is triggered by a trade, as well as by a bid or offer; (2) while the options markets do have access to information from other exchanges, they do not have an electronic linkage that provides for the transmission of orders similar to the Intermakert Trading System; and (3) while the CBOE does not explicitly prohibit trade-throughs, Rule 6.73(a) requires a floor broker ''to use due diligence to execute the order at the best price or prices available to him in accordance with the rules.'' and in some circumstances, a floor broker may determine that he should try to execute his order on another market.

Amendment No. 1 on an accelerated basis.

## II. Description of the Proposal

The CBOE proposes to amend its Rule 6.53 (''Rule'') governing the definition of stop orders to clarify that an option stop order on the CBOE is triggered when the option contract reaches a specified price ''on the CBOE floor.''

Currently, paragraph (c)(iii) of Exchange Rule 6.53 defines a stop order as a contingency order to buy or sell when the market for a particular option contract reaches a specified price. The Rule does not specify, but has always been interpreted by the CBOE to mean, that the contingency to buy or sell is satisfied when the option contract trades or is bid at or above the stop price (in the case of a buy order) or trades or is offered at or below the stop price (in the case of a sell order) ''on the floor of the CBOE.''[4] The proposed amendment will make it clear, therefore, that a stop order is not activated when the bid or offer (as appropriate) reaches the stop limit on another options exchange or when an options transaction occurs at the stop limit on another options exchange. The CBOE believes that the proposed rule change will clarify the required treatment of option stop orders under the CBOE's rules.

## III. Discussion

After careful review of the Exchange's proposal, and for the reasons discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[6]

The Commission believes that the proposal is reasonable in that it will not adversely affect the depth and liquidity necessary to maintain fair and orderly markets because the proposal represents a codification of the existing practice of the CBOE requiring that stop orders left with CBOE members must be effected and executed based on transactions or quotes that occur only on the floor of the CBOE.[7] It also serves to clarify the responsibility of CBOE members regarding the handling of stop orders by removing a potential ambiguity contained in the existing Rule.

The Commission notes that the CBOE has retracted a statement made in its original filing that claimed CBOE options traders have no way of knowing whether a contract has reached a specified ''stop'' in another options market place.[8] CBOE now states that it recognizes that options markets do have access to trade and quote information occurring on other options exchanges; however, CBOE maintains that the absence of an electronic linkage providing for the transmission of orders to other options exchanges in order to access current quotes makes it impracticable for CBOE members to rely on such data.

The Commission disagrees that the existence of an electronic order routing linkage between options markets should be a requirement to ''triggering'' option stop orders based on quotes or transactions occurring in another options market. In determining the proper triggering event(s) that apply to option stop orders, the most important factor to consider is whether the triggering quotes or trades are bona fide and available on a timely and reliable basis. However, it is not necessary to have an electronic order routing linkage, such as the Intermarket Trading System (''ITS''), to ensure that quotes and trades occurring on other options exchanges meet this test.

Notwithstanding its disagreement with CBOE over the relevance of the existence of an intermarket electronic order routing system to the present proposal, the Commission believes there are valid reasons for approving the CBOE's proposal at this time. The rule proposal codifies an interpretation of CBOE Rule 6.53 that has been observed by market participants for many years. Indeed, this interpretation is consistent with the practices of the Annex and PCX.[9] Ideally, the extension of national market system principles to the options exchanges would include the existence of electronic linkages ensuring the availability to all market participants of real-time quote and trade information and the ability of exchange markets to access each other's markets at the touch of a button. Another reason to approve the present filing is that while real-time quote and trade information originating from other options markets is currently available to all market participants, including CBOE floor members, this information is not always reliable. For instance, during the last several years, the dissemination of options trade information has been subject, during certain peak market volatility events, to ''queuing,'' whereby quote and trade data become bottlenecked and cannot be delivered on a real-time basis. Until options quote and trade information becomes more reliable, it is reasonable for the options exchanges to limit instances where members must automatically trigger and execute customer orders based on quote and trade information emanating from the other options exchanges.

Given that CBOE's policy regarding options stop orders ignores quotes and transactions occurring on other options markets, it is important to emphasizes that broker-dealers representing customer options orders, including CBOE floor brokers, must continue to fulfill their best execution obligations, this includes monitoring the prices available on all exchanges that trade the particular option and may require the broker-dealer to attempt execution on the exchange with the best available price. Moreover, the CBOE, along with the other exchanges, should continue to efforts to increase the reliability of the dissemination of timely quote and trade information. At some point in future, when such reliability increases, it may be appropriate to activate stop orders or other contingency orders based on bids, offers, or executions occurring on other options markets.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amendment clarifies the description of the proposed rule change and explains several statements in the filing. For these reasons, the Commission finds good cause for approving Amendment No. 1 on an accelerated basis.

[4] *See* Amendment No. 1, *supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] The Commission notes that the American Stock Exchange (''Amex'') and the Pacific Exchange, Inc. (''PCX''), interpret their rules to mean that a stop order left with a member will be executed based on transactions or quotes that occur only on the floor of their own exchange. Telephone conversation between Stuart Diamond, Director of Rulings, Amex, and Chester A. McPherson, Staff Attorney, Division, Commission, February 3, 1998; telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, and James T. McHale, Special Counsel, Division, Commission, on June 18, 1998.

[8] The Commission notes that various available proprietary systems provide quotes and transactions reports on a real time basis.

[9] *See supra* note 7.

## IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than the those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–41, and should be submitted by July 21, 1998.

## V. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–97–41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–17294 Filed 6–29–98; 8:45 am]

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40121; File Nos. SR–DTC–98–12, SR–PTC–98–02]**

## Self-Regulatory Organizations; The Depository Trust Company; Participants Trust Company; Notice of a Proposed Rule Change Relating to a Proposed Merger Between The Depository Trust Company and Participants Trust Company

June 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 29, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on June 2, 1998, Participants Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on June 2, 1998, Participants Trust Company (''PTC'') filed with the Commission proposed rule changes as described in Items I, II, and III below, which items have been prepared primarily by DTC and PTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule changes.

### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes relate to the arrangements for a proposed merger between DTC and PTC.

### II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, DTC and PTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC and PTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

In March 1998, PTC announced that it had decided to seek an affiliation with DTC. The arrangements for the proposed merger provide the following. PTC will merge with and into DTC, and DTC will make certain payments to PTC's shareholders. For at least two years from the effective date of the merger, DTC will provide the services currently offered by PTC in a separate division of DTC (''Division''). The current rules and procedures of PTC with respect to depository services, the processing of transactions in PTC-eligible securities, and the PTC participants fund will be incorporated into the rules and procedures of DTC and will be applied to the business of the Division.[3] In addition, DTC will offer PTC participants that are not DTC participants an opportunity to become participants of the Division.

Under the proposed rule changes, PTC's users, most of which are also DTC participants, will continue to have access to the depository services offered by PTC. DTC and PTC believe that the proposed merger should assist in eliminating redundant facilities and thereby should reduce the costs of processing transactions in mortgage-backed securities that are currently PTC-eligible.

DTC and PTC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because the arrangements for the proposed merger should assure that continued availability to PTC users of efficient and cost-effective depository services and thereby should facilitate the prompt and accurate clearance and settlement of transactions in PTC-eligible securities. In addition, the proposed arrangements should provide PTC participants with access to DTC's facilities and should be implemented consistent with DTC's obligations to safeguard securities and funds in its custody and control or for which it is responsible.

*(B) Self-Regulatory Organizations' Statement on Burden on Competition*

DTC and PTC believe that the proposed arrangements will impose no burden on competition. Securities depositories registered under Section 17A of the Act[5] are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and to respond to regulatory requirements.

DTC and PTC believe that the current regulatory scheme and the particular structure and nature of the depository industry provide ample means to insure that the merger of PTC with and into DTC will achieve regulatory objectives. Sections 17A and 19 of the Act[6] and the rules thereunder provide the Commission appropriate and effective regulatory authority over DTC. DTC is

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC and PTC.

[3] DTC and PTC have informed the Commission that the changes to DTC's rules and procedures to provide for the Division and to accommodate the application of PTC's current rules and procedures to Division business will be the subject of a future rule filing with the Commission.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1 and 78s.

owned by its members who utilize its services, and its Board of Directors is comprised of its members. DTC must assure a fair representation of its member in the selection of its directors and administrators. DTC's service fees are reviewed by its board and subject to public notice and comment.

After the consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost depository and clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced and thereby should permit a more efficient and productive allocation of industry resources. Accordingly, DTC and PTC believe that the proposed transaction advances the objectives of the national clearance and settlement system without an inappropriate or unnecessary burden upon competition.

*(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participation or Others*

Written comments on the proposal from DTC participants, PTC participants, or others have not been solicited or received. However, the proposed arrangements have been reviewed and approved by PTC's Board of Directors, which is comprised of representatives of the banks and broker-dealers that are PTC's stockholders and participants. In addition, DTC believes that the proposed arrangements are consistent with recommendations made by the Vision 2000 Committee (''Committee''), a committee of industry representatives of the Boards of DTC and the National Securities Clearing Corporation. The Committee's report dated September 1994 states that:

> The industry currently owns a number of utilities that provide services related to the comparison, clearing, settlement and safekeeping of U.S. (and to a lesser degree, international) securities. These utilities overlap in two ways. * * * We believe that the industry's and, as important, the investors', overall costs can be reduced and safety and soundness can be enhanced by eliminating these overlaps where there is no clear advantage to having specialization or competing development.[7]

## III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC or PTC consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rules changes should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal offices of DTC and PTC. All submissions should refer to File Nos. SR–DTC–98–12 and SR–PTC–98–02 and should be submitted by July 21, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–17384 Filed 6–29–98; 8:45 am]

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[7] The Committee's report is attached as Exhibit 2 to DTC's filing, which is available for review and inspection in the Commission's public reference room and through DTC.

[8] 17 CFR 200.30–3(a)(12).

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# OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Restoration of Preferential Tariff Treatment Under the Generalized System of Preferences for Certain Articles From Thailand

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** Preferential tariff treatment under the generalized System of Preferences (GSP) is restored to four articles from Thailand, effective with respect to articles entered, or withdrawn from warehouse, on or after the 15th day after the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Sean Murphy, Director for ASEAN Affairs, Office of the U.S. Trade Representative, (202) 395–6813.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 503(c)(2) of the Trade Act of 1974, as amended, 19 U.S.C. 2463(c)(2)), beneficiary developing countries are subject to competitive need limitations on the preferential tariff treatment afforded under the GSP. Proclamation 6813 of July 28, 1995 (60 FR 39095), in relevant part, proclaimed the waiver of competitive need limitations and the restoration of GSP preferential tariff treatment with respect to four articles from Thailand, with an effective date to be announced by the United States Trade Representative by publication of a notice in the **Federal Register**. These four articles are in Harmonized Tariff Schedule of the United States (''HTS'') subheadings 6702.90.65 (certain artificial flowers, foliage, fruit and parts thereof); 7113.11.20 (certain articles of silver jewelry and parts thereof, valued at not over $18 per dozen); 7113.19.50 (certain other articles of jewelry and parts thereof); and 9403.60.80 (certain wooden furniture).

Pursuant to authority vested in the United States Trade Representative by the laws of the United States, including but not limited to sections 503 and 604 of the Trade Act and Proclamation 6813 of July 28, 1995, and in order to restore GSP preferential tariff treatment to articles from Thailand in HTS subheadings 6702.90.65, 7113.11.20, 7113.19.50, and 9403.60.80, the HTS is modified as specified in the Annex to this notice, effective with respect to articles entered, or withdrawn from warehouse, on or after the 15th day after publication of this notice.

**Susan Esserman,**

*Acting United States Trade Representative.*

**Annex**

Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States (''HTS'') is modified by:

(1) Deleting ''6702.90.65 Thailand'' and ''7113.11.20 Thailand''; and

(2) Deleting ''Thailand'' set out opposite subheading 7113.19.50 and opposite subheading 9403.60.80.

Section B. For HTS subheadings 6702.90.65 and 7113.11.20, the Rates of Duty 1-Special subcolumn is modified by deleting

the symbol ''A*'' and inserting an ''A'' in lieu thereof.

[FR Doc. 98–17388 Filed 6–25–98; 3:23 pm]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. 301–116]**

### Termination of Action: Protection of Intellectual Property Rights by the Government of Honduras

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of termination of action and monitoring and request for public comments.

**SUMMARY:** On March 16, 1998, the USTR determined that the failure by the Government of Honduras to provide adequate and effective protection of intellectual property rights was unreasonable and burdened or restricted United States commerce and that the appropriate action was to suspend preferential treatment accorded under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) programs to certain products of Honduras, including certain cucumbers, watermelons, and cigars. In view of the Government of Honduras' measures to combat piracy and to protect intellectual property rights of the United States, the USTR has terminated that action taken under Section 301(b) of the Trade Act of 1974 (''Trade Act''). USTR will monitor Honduras' compliance in protecting the intellectual property rights of the United States pursuant to Section 306 of the Trade Act.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Mary Barnicle, Office of the Western Hemisphere, (202) 396–5190 or William Busis, Office of the General Counsel, (202) 395–3150, Office of the United States Trade Representatives.

**SUPPLEMENTARY INFORMATION:** In 1992, the Motion Picture Association filed a petition under the Generalized System of Preferences program asking that tariff preference benefits to Honduras under the GSP and CBI programs be withdrawn due to widespread, blatant copyright piracy. In May 1997, the Trade Policy Staff Committee (TPSC) recommended that GSP and CBI benefits be suspended unless the Government of Honduras improved its intellectual property rights enforcement within four months. On October 31, 1997, in order to implement the TPSC recommendation, the USTR initiated an investigation under Section 302(b) of the Trade Act (19 U.S.C. 2412(b)) with respect to certain acts and policies of the Government of Honduras concerning its protection of intellectual property rights, including the failure to provide adequate and effective copyright protection and enforcement of rights of copyright owners, resulting in, for example, the wise-spread unauthorized broadcasting in Honduras of pirated videos and the rebroadcasting of U.S. satellite-carried television programming. See 62 FR 60299 of November 7, 1997. The USTR proposed to determine that the practices under investigation were actionable under Section 301 of the Trade Act and that the appropriate response would be a partial suspension of tariff preferences for certain Honduran imports.

After the initiation of the investigation, the United States consulted repeatedly with the Government of Honduras regarding the matters under investigation. However, while the Honduran government established a television regulatory authority and initiated criminal actions against two stations engaged in broadcast piracy, blatant broadcast piracy continued and U.S. copyright-based industries continued to suffer harm. On March 16, 1998, the USTR determined pursuant to sections 301(b)(1) and 304(a)(1)(A)(ii) of the Trade Act that the Government of Honduras failed to provide adequate and effective protection of intellectual property rights and the acts, policies or practices of Honduras under investigation were unreasonable and burdened or restricted U.S. commerce. The USTR further determined pursuant to sections 304(a)(1)(B), 301(b)(2), and 301(c)(1)(C) of the Trade Act that the appropriate and feasible action was to suspend the duty-free GSP and CBI treatment accorded to certain products of Honduras, including certain cucumbers, watermelons, and cigars. See 63 FR 16608 of April 3, 1998.

Following the USTR determinations as to the actionability and specific action to be taken, the Government of Honduras has taken a number of steps to stop broadcast piracy. It temporarily shut down two television stations and imposed and collected fines from the stations in an effort to provide adequate copyright protection. The Government of Honduras has also made a written promise to impose higher fines and to temporarily shut down the television stations again for a longer period if piracy resumes. Section 307(a)(1)(C) of the Trade Act authorizes the USTR to terminate any action, subject to the specific direction, if any, of the President, if such action is being taken under Section 301(b) and is no longer appropriate. In light of the foregoing, the USTR has determined that the existing Section 301(b) action should be terminated and, as specified in the annex to this notice, the suspended GSP and CBI benefits should be restored. Restoration of benefits will be effective with regard to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice. The USTR has also decided to terminate the GSP review initiated in 1993.

Section 604 of the Trade Act, as amended (19 U.S.C. 2463), authorizes the President to modify the Harmonized Tariff Schedule of the United States (HTS) to reflect laws, and actions thereunder, affecting the treatment of imports. In Proclamation 6969 of Jan. 27, 1997 (62 FR 4415 of Jan. 29, 1997), the President delegated to USTR the authority under Section 604 to embody rectifications, technical or conforming changes, or similar modifications in the HTS.

The notice that suspended GSP and CBI benefits for certain imports from Honduras renumbered HTS general note 7(d)(iv)—which embodied in the HTS Section 213(d) of the CBERA, as amended (19 U.S.C. 2703(d))—as HTS general note 7(g). See 63 FR 16608 of April 3, 1998. Pursuant to the authority delegated by the President to USTR in Proclamation 6969, the annex to this notice makes a technical correction to HTS general note 7(g) in order to make the provision a complete sentence.

Prior to terminating this 301 action, the USTR consulted with the domestic industry concerned regarding the modification and termination of the existing action. An opportunity for public comment prior to this action was not possible in view of the need for expeditious action. Immediate termination of the Section 301 action was required to ensure full and prompt implementation of measures taken by the Government of Honduras to prevent resumption of piracy.

Interested members of the public are now invited to submit comments to USTR regarding this action. USTR will review these comments upon receipt.

### Public Comments

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on July 31, 1998. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223,

Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301–116) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. Copies of the public version of the petition and other relevant documents are available for public inspection in the USTR Reading Room. An appointment to review the docket (Docket No. 301–116) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

**Susan G. Esserman,**

*Acting United States Trade Representative.*

## Annex

The Harmonized Tariff Schedule of the United States (''HTS'') is modified as set forth below with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective specified for the enumerated actions:

1. With respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, or on after June 30, 1998:

(a). General note 4(d) of the HTS is modified by deleting the following subheadings and the country set out opposite them: 0707.020 Honduras; 0707.00 Honduras; 0807.11.30 Honduras.

(b). For the following subheadings, the Rates of Duty 1—Special subcolumn is modified by deleting the symbol ''A*'' and inserting an ''A'' in lieu thereof: 0707.20; 0707.00; 0807.11.30.

2. With respect to articles entered, or withdrawn from warehouse for consumption, on or after June 30, 1998.

(a). General note 7(d) of the HTS is modified by:

(i). in subdivision (ii) deleting ''of the CBERA;'' and inserting ''of the CBERA; or'' in lieu thereof;

(ii) in subdivision (iii) deleting ''provided for in this note; or'' and inserting ''provided for in this note.'' in lieu thereof; and

(iii). deleting subdivision (iv).

(b). For the following subheadings, the Rates of Duty 1—Special subcolumn is modified by deleting the symbol ''E*'' and inserting an ''E'' in lieu thereof: 0707.00.20; 0707.00.40; 0807.11.30; 2402.10.60.

3. With respect to articles entered, or withdrawn from warehouse for consumption, on or after the April 20, 1998, general note 7 to the HTS is modified by deleting subdivision 7(g) and inserting the following new subdivision 7(g) in lieu thereof:

''(g) The duty-free treatment provided under the CBERA shall not apply to any agricultural product of chapters 2 through 52, inclusive, that is subject to a tariff-rate quota, if entered in a quantity in excess of the in-quota quantity for such produce.''

[FR Doc. 98–17485 Filed 6–26–98; 12:56 pm]

BILLING CODE 3190–01–M

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST–96–1437]**

### Privacy Act of; Notice to Amend Systems of Records

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

**ACTION:** Proposed amendments to numerous Privacy Act systems of records.

**SUMMARY:** As part of the biennial review of systems of records required by the Privacy Act, DOT discovered outdated room numbers for some records system notices and the failure to identify a second repository of records in one system. This notice proposes to make the appropriate changes.

**EFFECTIVE DATE:** August 10, 1998.

**ADDRESSES:** Interested individuals may comment on this publication by writing to Robert I. Ross, C–10, U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590; telephone: 202–366–9156; fax: 202–366–9170; e-mail: bob.ross@ost.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Inquiries or comments concerning this proposed altered system should be directed to Robert I. Ross, Office of the General Counsel, C–10, US Department of Transportation, Washington, DC 20590; telephone: 202–366–9156; fax: 202–366–9170; e-mail: bob.ross@ost.dot.gov. If no comments are received, the proposed change will become effective on the above-mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the change.

**SUPPLEMENTARY INFORMATION:** DOT systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address. The specific change to each record system being amended is highlighted in italics below in the notice, as amended, which is being published in its entirety. None of the proposed amendments is within the purview of subsection (r) of the Privacy Act, as amended, which requires the submission of a new or altered systems report.

### DOT/OST 003

**SYSTEM NAME:**

Allegations of Infringement of United States Patents.

**SECURITY CLASSIFICATION:**

Unclassified

**SYSTEM LOCATION:**

Office of the Secretary of Transportation, Office of the General Counsel, 400 7th Street, SW., *Room 10102*, Washington, DC, 20590.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who believe that an agency of the Department of Transportation is infringing a United States patent owned by the individual.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copies of correspondence alleging that agencies of the Department of Transportation have infringed, or are infringing, United States patents owned by the originator of the correspondence. Copies of replies by the Department Patent Counsel to the originator of the allegation. Copies of correspondence forwarding the allegation to the particular Department agency accused for their comment; their replies to Patent Counsel. Copies of correspondence between the Department of Transportation and the Department of Justice concerning the allegations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

49 CFR 1.57

**PURPOSE(S):**

The purpose of the system is to document allegations that agencies of the Department of Transportation have infringed, or are infringing, United States patents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of allegations and Patent Counsel's actions thereon.

SEE PREFATORY STATEMENT OF GENERAL ROUTINE USES.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only to individuals with established legal interest or legal ''need to know.''

RETENTION AND DISPOSAL:

Transfer to Federal Records Center two years after close of file; destroy 25 years after close of file.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing address: Patent Counsel, C–15, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Patent owners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## DOT/OST 004

SYSTEM NAME:

Board for Correction of Military Records (BCMR).

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *4100*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel requesting the Board for Correction of Military Records to correct their military records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actions of the General Counsel acting under delegated authority approving or disapproving BCMR cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of the General Counsel's action in individual BCMR cases.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Files are kept in the office of the Assistant General Counsel. Requests are referred to the Executive Secretary, BCMR.

RETENTION AND DISPOSAL:

*Retained indefinitely for precedential purposes.*

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Assistant General Counsel for Environmental, Civil Rights and General Law, C–10, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Contact System Manager.

RECORD ACCESS PROCEDURES:

Contact System Manager.

CONTESTING RECORD PROCEDURES:

Same as ''Record Access Procedure.''

RECORD SOURCE CATEGORIES:

Official agency records; hearings, documentary material from outside the agency.

## DOT/OST 006

SYSTEM NAME:

Confidential Statement of Employment and Financial Interests.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of Transportation in supervisory or other positions where a conflict of interest or the appearance of a conflict of interest might occur. Also included in this category are Consultants and Experts of the Department of Transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on employment and financial interests and debts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information to be furnished is required by Executive Order 11222 and the regulations of the Office of Personnel Management (OPM) issued thereunder and may not be disclosed except as the OPM or the agency head may determine. The purpose of the use of this information is to avoid a conflict of interest or the appearance of a conflict of interest in DOT employees.

Prefatory Statement of General Routine Uses 1, 4 and 6 apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Accordion-type file folder.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are stored in safe.

RETENTION AND DISPOSAL:

Records are kept 6 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Deputy General Counsel, C–2, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room 10428.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the Deputy General Counsel either in person or in writing. If written the individual must provide a notarized signature.

RECORD ACCESS PROCEDURES:

Access to records requires the individual to contact in person or write the Deputy General Counsel.

CONTESTING RECORD PROCEDURES:

Contest of a record is also through the Deputy General Counsel.

RECORD SOURCE CATEGORIES:

Statements of employment and financial interests, creditors, interests in real property are submitted by employees and consultants of the

Department of Transportation. Initial requests for submission of statements are through the Office of Personnel and Training.

**DOT/OST 012**

**SYSTEM NAME:**

Files Relating to Personnel Hearings.

**SYSTEM LOCATION:**

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Certain employees of the Office of the Secretary who have availed themselves of the opportunity for a hearing in certain personnel matters.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A record of the legal services performed and reference material for future cases.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Used by agency management in the preparation and conduct of administrative hearings.

See Prefatory Statement of General Routine Uses.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders stored in file cabinets (Conserv-a-File).

**RETRIEVABILITY:**

Indexed individually by name in alphabetical sequence.

**SAFEGUARDS:**

Files are kept in the office of the Assistant General Counsel.

**RETENTION AND DISPOSAL:**

Retire in 3 years; destroy in 6 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Mail Address: Assistant General Counsel for Environmental, Civil Rights and General Law, C–10, U.S. Department of Transportation, Washington, D.C. 20590.

Office Location: 400 7th Street, SW., Room *10102*.

**NOTIFICATION PROCEDURE:**

Apply to System Manager.

**RECORD ACCESS PROCEDURES:**

Apply to System Manager.

**CONTESTING RECORD PROCEDURES:**

Same as ''Record Access Procedure.''

**RECORD SOURCE CATEGORIES:**

Official agency records; hearings; documentary material from outside the agency.

**DOT/OST 019**

**SYSTEM NAME:**

Individual Personal Interests in Intellectual Property.

**SYSTEM LOCATION:**

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Inventors employed by or having contractual relationships with the Department of Transportation and other Government agencies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Invention disclosures, Government Patents Branch cases, patent applications, issued patents, and license agreement files.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Used by Patent Counsel and his staff as a record of determination of rights in inventions, determination of novelty and patentability, determination of patent coverage, and allocation of rights in issued patents.

See Prefatory Statement of General Routine Uses.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders stored in file cabinets.

**RETRIEVABILITY:**

Indexed individually by name in alphabetical sequence.

**SAFEGUARDS:**

Records are disclosed only to individuals who have legal interest in the records or legal ''need to know.''

**RETENTION AND DISPOSAL:**

Transfer to Federal Records Center two years after close of file; destroy 25 years after close of file.

**SYSTEM MANAGER(S) AND ADDRESS:**

Mail Address: Patent Counsel, C–15, U.S. Department of Transportation, Washington, D.C. 20590

Office Location: 400 7th Street, SW., Room *10102*.

**NOTIFICATION PROCEDURE:**

Apply to System Manager.

**RECORD ACCESS PROCEDURES:**

Apply to System Manager.

**CONTESTING RECORD PROCEDURES:**

Same as ''Record Access Procedures''

**RECORD SOURCE CATEGORIES:**

Individual inventors, technical evaluators, and United States Patent and Trademark Office.

DOT/OST 037

**SYSTEM NAME:**

Records of Confirmation Proceeding Requirements for Proposed Executive Appointments to the Department of Transportation.

**SYSTEM LOCATION:**

Department of Transportation (DOT), Office of the Secretary (OST), Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals nominated for top executive positions of the Department of Transportation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Financial data and biographical data.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Data submitted to the General Counsel as reviewing official by subject individual for use by the Senate Commerce Committee to determine if there would be a conflict of interest, or the appearance of a conflict of interest, in subject's appointment to the Department of Transportation.

See Prefatory Statement of General Routine Uses.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Legal sized documents located in locked safe.

**RETRIEVABILITY:**

Individual names filed alphabetically.

**SAFEGUARDS:**

Physical security consists of filing records in safe; data released to Senate Commerce Committee and authorized officials only of the Department.

**RETENTION AND DISPOSAL:**

Records are retained for 6 years then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Mail Address: Deputy General Counsel, C–2, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *10428*.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the Deputy General Counsel at the address above, either in person or in writing. If written the individual must provide a notarized signature.

RECORD ACCESS PROCEDURES:

Access to records requires the individual to contact in person or write the Deputy General Counsel.

CONTESTING RECORD PROCEDURES:

Contest of a record is also through the Deputy General Counsel.

RECORD SOURCE CATEGORIES:

Documents are provided by subject individual.

DOT/OST 045

SYSTEM NAME:

Unsolicited Contract or Research and Development Proposals Embodying Claims of Proprietary Rights.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who believe they have original and innovative ideas in the field of transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of descriptions of proposed innovations or inventions and methods of carrying out the proposal. Evaluations by Patent Counsel of the adequacy and propriety of restrictive markings on the proposals and correspondence of the Patent Counsel pertaining thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of Patent Counsel's action in individual unsolicited proposal cases.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name and subject in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only in accordance with the terms of restrictive markings agreed upon between submitter and DOT.

RETENTION AND DISPOSAL:

Transfer to storage when three years old; Destroy after six years.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Patent Counsel, C–15, U.S. Department of Transportation, Washington, D.C. 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Same as ''Record Access Procedure.''

RECORD SOURCE CATEGORIES:

Forwarded by individual or by the DOT office to whom unsolicited proposal was addressed.

## DOT/OST 056

SYSTEM NAME:

Garnishment Files.

SYSTEM LOCATION:

(1) Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

(2) *Department of Transportation, Federal Aviation Administration, Southern Region, Financial Services Division, 1701 Columbia Avenue, College Park, GA 30337 (mailing address: Box 20636, Atlanta, GA 30320).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of Transportation, including members of the Coast Guard, whose pay is sought to be attached under section 459 of the Social Security Act, 42 U.S.C. 659.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and court orders, and copies thereof, concerning attachment of employees' pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as record of garnishments and Garnishment Attorney's action thereon.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in the Garnishment Attorney's office.

RETRIEVABILITY:

Indexed individually by name in alphabetical order.

SAFEGUARDS:

Records are disclosed only to individuals with established legal interest or legal ''need to know.''

RETENTION AND DISPOSAL:

Retained for as long as the attachment of pay continues and thereafter as needed for precedential value.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Garnishment Attorney, C–10, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Data are obtained from state courts and agencies, private attorneys, present and former spouses of employees, and federal pay records.

## DOT/OST 059

SYSTEM NAME:

Files of the Board for Correction of Military Records (BCMR) for the Coast Guard.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, Board for Correction of Military Records, 400 7th Street, SW., Room *4100*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed applications for relief before the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and related documents, Board decisions, and official military records of applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the Chairman, the Board, the Executive Secretary and Staff in

determining whether to grant relief to applicants.

Used by the Coast Guard in presenting its views to the Board concerning pending cases. Also used by applicant and his representative.

Used by the General Counsel and his staff in determining whether to approve decisions of the board.

See Prefatory Statement of General Routine Uses.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders stored in file cabinets.

**RETRIEVABILITY:**

Indexed individually by name in one of two alphabetical sequences representing pending and closed cases. Also indexed by docket number. Pending cases filed by docket number; closed cases filed alphabetically.

**SAFEGUARDS:**

Records are disclosed only to the applicant, his representative, interested members of Congress, and the Coast Guard.

**RETENTION AND DISPOSAL:**

Transfer of official military record of individual separated from service to Federal Records Center when case closed; transfer of official military record of Active or Reserve member to Coast Guard Headquarters when case closed; retention of application file in all cases.

**SYSTEM MANAGER(S) AND ADDRESS:**

Mail Address: Executive Secretary, Board for the Correction of Military Records, C–60, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *4100*.

**NOTIFICATION PROCEDURE:**

Apply to System Manager.

**RECORD ACCESS PROCEDURES:**

Apply to System Manager.

**CONTESTING RECORD PROCEDURES:**

Same as ''Record Access Procedure.''

**RECORD SOURCE CATEGORIES:**

U.S. Coast Guard, Veterans Administration, individual applicants.

Dated: June 22, 1998.

**Nancy E. McFadden,**

*General Counsel, Department of Transportation.*

[FR Doc. 98–17229 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Proposed Advisory Circular 25–XX, Certification of Transport Airplane Structure

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

**ACTION:** Notice of Availability of Proposed Advisory Circular (AC) 25–XX and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides methods acceptable to the Administrator for showing compliance with the provisions of subparts C and D of 14 CFR part 25 regarding the type certification requirements for transport airplane structure. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATES:** Comments must be received on or before October 28, 1998.

**ADDRESSES:** Send all comments on proposed AC to: Federal Aviation Administration, Attention: Jim Haynes, Airframe/Airworthiness Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Katherine Burks, Transport Standards Staff, at the address above, telephone (206) 227–2114.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25–XX, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

### Discussion

This AC contains guidance for the latest amendment of the regulations and applies to all transport category airplanes for which a new, amended, or supplemental type certificate is required. This guidance should be applied to any portion of the airplane structure that has been modified. In the past, advisory and guidance information applicable to transport airplane structure has been formally published as ACs. Advisory circulars have not been developed for all of the regulatory requirements applicable to transport airplane structure, however. In many instances, certification of new technology airplanes resulted in the need to interpret the existing regulations and to apply new regulations. Issue papers and special conditions were generated to document the compliance method agreed upon between the applicant and the FAA. In other instances, applicants, FAA Aircraft Certification Office (ACO) managers, and foreign regulatory authorities have requested interpretation of the intent of specific regulations. This guidance was documented in the form of policy memorandums that were distributed to all ACOs, letters to applicants and foreign airworthiness authorities, and issue papers. In many instances, this information was not organized in a manner that allowed easy access, and applicants were not aware of revised policy. This AC formalizes existing policy so that the public and FAA personnel have access to this information. The methods and procedures described in this AC have evolved after many years and represents current certification practice. Issued in Renton, Washington, on June 22, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.*

[FR Doc. 98–17365 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Fire and Cabin Safety Research; Notice of Public Conference

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

**ACTION:** Notice of Public Conference.

**SUMMARY:** This notice announces an International Public Conference on Fire and Cabin Safety Research, which is being held by the Federal Aviation Administration (FAA) as a follow-up to a similar conference in November of 1995, and to discuss the current state of cabin and fire safety research. The Cabin Safety Research Program (CSRP) and the conference are being jointly sponsored by the Joint Aviation Authorities (JAA)

of Europe, Transport Canada Civil Aviation (TCCA) and the Civil Aviation Bureau of Japan (JCAB).

**DATES:** The Conference is scheduled for Monday through Friday, November 16–20, 1998. Registration will be from 6:00 p.m. until 8:00 p.m., November 15, and from 7:00 a.m. until 8:30 a.m. on November 16. The Conference will begin at 8:30 a.m., November 16.

**REGISTRATION:** Persons planning to attend the public conference are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information. Pre-registration deadline is October 1, 1998, and registration is subject to space availability. There is a $225 fee to attend the conference, which will include lunch and refreshments each day, as well as one dinner. Payment can be in the form of checks or certain major credit cards.

**ADDRESSES:** The public conference will be held at Harrah's Casino-Hotel, 777 Harrah's Boulevard, Atlantic City New Jersey 08401, telephone 1–800–242–7724 (outside the United States: 609–441–5600).

**FOR FURTHER INFORMATION CONTACT:** April Horner, Galaxy Scientific Corporation, c/o FAA Technical Center, Fire Safety Branch, AAR–422, Bldg. 287, Atlantic City International Airport, New Jersey 08405, telephone 609–485–4471, fax 609–646–5229, or on internet at: April__CTR__Horner@admin.tc.faa.gov

**SUPPLEMENTARY INFORMATION:** Notice is given of a public conference November 16–20, 1998, at the Harrah's Casino-Hotel, 777 Harrah's Boulevard, Atlantic City, New Jersey 08401. This conference is a follow-up to a similar conference of November 1995 and is intended to summarize the current state of cabin and fire safety research, as well as explore the directions of future research.

In order to more systematically address the subject to cabin safety research, the FAA, in conjunction with the JAA and TCCA developed a Cabin Safety Research Program plan. This document describes a procedure whereby the Aviation Authorities can identify and assess the potential benefit of research in different areas and later determine the appropriateness of specific cabin safety research. This plan was introduced at the 1995 conference and the authorities have been working under its provisions since then.

While research has been very productive and has resulted in improved safety standard, it has been largely carried out in piecemeal fashion, outside of a systematic framework. There was no formal vehicle to integrate all cabin safety research so that the benefits are maximized, and the available funds are spent most effectively. The FAA has developed such a vehicle to improve both the efficiency and quality of future cabin safety research. Because research will often result in new guidance or regulation, and because the aviation industry is largely an international entity, this potential regulatory impact must be harmonized between regulatory authorities. Therefore, the development of the CSRP was coordinated with the JAA, TCCA and the JCAB.

The FAA has determined that a follow-up to the 1995 conference is appropriate and timely, and that issues relating to fire safety in general (that is, fire safety not limited to the cabin) should be included. This conference will afford the interested public an opportunity to comment on the research programs currently underway, as well suggest the course of future research.

Additional information regarding the conference can be found on the World Wide Web, at: http://asp.tc.faa.gov/FAATC/AAR422/conference/brochure.html

The agenda for the conference will include:

*Monday, November 16, 1998*

Conference Opening Session
Presentations of general interest and program goals

*Tuesday, November 17, 1998*

AM
CRASH DYNAMICS (Structures)
FIRE—General
PM
CRASH DYNAMICS—Injury
FIRE—Halon Systems
OPERATIONAL ISSUES
FIRE—Advanced Materials

*Wednesday, November 18, 1998*

AM
CRASH DYNAMICS—Modeling
OPERATIONAL ISSUES
FIRE—Cargo Compartment
FIRE—Advanced Materials
PM
CRASH DYNAMICS—Workshop
EVACUATION
FIRE—Cargo Compartment (Modeling)
FIRE—Advanced Materials

*Thursday, November 19, 1998*

AM
EVACUATION—
FIRE—Applied Materials
FIRE—Fuel Tank Explosion
PM
EVACUATION
FIRE—Applied Materials
FIRE—Watermist and other Systems

*Friday, November 20, 1998*

AM
Sessions Summaries
Conference Closing Session

Note that this agenda involves simultaneous presentation of different topics. However, to the extent possible, subjects that might have broader applicability have been scheduled so as to not overlap.

Attendance is open to the interested public, but will be limited to the space available.

**Conference Procedures**

Hotel room reservations should be made in advance. A block of rooms has been reserved at Harrah's Hotel-Casino at Conference rates of $79 plus tax and fees for a standard single/double room, and $99 plus tax and fees for a single/double suite. Persons wishing to attend the Conference are encouraged to make reservations by October 1, 1998, by contacting the hotel direct at 1–800–242–7724 (outside the United States: 609–441–5600). Be sure to identify yourself as an FAA Fire/Cabin Safety Conference attendee to receive the conference rate.

Persons in Canada that have questions of a technical nature, or would like to find out more regarding Transport Canada's involvement, may contact: Mr. Claude Lewis, Transport Canada Civil Aviation, Aircraft Certification Branch—AARDH, Ottawa, Ontario, Canada KIA ON8, Telephone: 613–990–5906, fax: 613–996–9178; e-mail:lewisc@tc.gc.ca.

Persons who plan to attend the Conference should be aware of the following procedures which are established to facilitate the workings of the conference.

1. The Conference will be open on a space available basis to all persons registered.

2. A $225 fee will be charged for attending the conference. This fee will include lunch each day, as well as refreshments during breaks, and one dinner.

3. Following each presentation, or series of presentations on a similar topic, a brief question and answer period may be allowed and participants will be given the opportunity for open discussions, within the time available. In addition, there will be spearate workshop sessions following some of the technical sessions for more in-depth discussions.

4. This conference is intended to address fire and cabin safety research, rather than regulatory, issues. As such, statements made by Airworthiness Authority participants at the conference will not be taken as expressing final Authority positions.

Issued in Renton, Washington, on June 19, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.*

[FR Doc. 98–17366 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 15, 1998 to be assured of consideration.

*Special Request:* In order to ensure that the survey described below is available to include in the materials used for the Federal Tax Deposit (FTD) School, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 26, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1432.

*Project Number:* M:SP:V 98–012–G.

*Type of Review:* Revision.

*Title:* Small Business Laboratory Survey for ABCs of Federal Tax Deposits (FTDs) Pilot Classes.

*Description:* The purpose of the survey is to obtain feedback from the class attendees on the effectivness of the class. Any appropriate feedback will be used to improve the class material, presentation, instructors, and related customer service.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 500.

*Estimated Burden Hours Per Respondent:* 2 minutes.

*Frequency of Response:* Other (one time only).

*Estimated Total Reporting Burden:* 17 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 98–17330 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 16, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 30, 1998 to be assured of consideration.

**Bureau of the Public Debt (PD)**

*OMB Number:* 1535–0122.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.

*Description:* The voluntary customer service survey, as mandated by Executive Order 12862, measures customer satisfaction.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 7,000.

*Estimated Burden Hours Per Respondent:* 7 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 876 hours.

*Clearance Officer:* Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 98–17331 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–40–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 17, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 15, 1998 to be assured of consideration.

*Special Request:* In order to conduct the focus group interviews described below in a timely manner, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 30, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1432.

*Project Number:* M:SP:V 98–014–G.

*Type of Review:* Revision.

*Title:* Balance Due Return Focus Group Interviews.

*Description:* There are two objectives of the focus groups:

(1) To learn more about why taxpayers have insufficient withholding and estimated payments; and

(2) To receive input from taxpayers and return prepares on what the Service can or should do about this situation.

With this knowledge, we hope to improve IRS policies and procedures, reduce the burden balance due taxpayers face, and improve taxpayer satisfaction.

*Respondents:* Individuals or households. Business or other for-profit.

*Estimated Number of Respondents:* 96.

*Estimated Burden Hours Per Respondent:*

| | |
|---|---|
| Screening process | 5 minutes. |
| Focus group interviews | 2 hours. |
| Travel time | 1 hour. |

*Frequency of Response:* Other (one time only).

*Estimated Total Reporting Burden:* 256 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 98–17332 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

June 18, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 30, 1998 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0200.

*Form Number:* IRS Form 5307.

*Type of Review:* Extension.

*Title:* Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans.

*Description:* This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code (IRC) sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 39,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—5 hr., 16 min.
Learning about the law or the form—4 hr., 10 min.
Preparing the form—8 hr., 9 min.
Copying, assembling, and sending the form to the IRS—1 hr., 4 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 726,960 hours.

*OMB Number:* 1545–0201.

*Form Number:* IRS Form 5308.

*Type of Review:* Extension.

*Title:* Request for Change in Plan/ Trust Year.

*Description:* Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 480.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 44 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 339 hours.

*OMB Number:* 1545–0409.

*Form Number:* IRS Forms 211 and 211(SP).

*Type of Review:* Revision.

*Title:* (1) Application for Reward for Original Information (Form 211).

(2) Solicited de Recompensa por Información Original (Spanish Version) (Form 211(SP)).

*Description:* Forms 211/211(SP) are the official application forms used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code (IRC) 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 11,200.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 2,800 hours.

*OMB Number:* 1545–0796.

*Form Number:* IRS Form 6524.

*Type of Review:* Revision.

*Title:* Office of Chief Counsel—Application.

*Description:* The Chief Counsel Application form provides data we deem critical for evaluating an attorney applicant's qualifications such as LSAT score, bar admission status, type of work preference, law school, class standing. OF–306 does not provide this information.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 3,000.

*Estimated Burden Hours Per Respondent:* 18 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 900 hours.

*OMB Number:* 1545–0800.

*Regulation Project Number:* Reg. 601.601.

*Type of Review:* Extension.

*Title:* Rules and Regulations.

*Description:* Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in its deliberations.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondent:* 600.

*Estimated Burden Hours Per Respondent:* 1 hour, 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 900 hours.

*OMB Number:* 1545–0814.

*Regulation Project Number:* EE–44–78 Final.

*Type of Review:* Extension.

*Title:* Cooperative Hospital Service Organizations.

*Description:* This regulation establishes the rules for cooperative hospital service organizations which seek tax-exempt status under section 501(e) of the Internal Revenue Code. Such an organization must keep records in order to show its cooperative nature and to establish compliance with other requirements in section 501(c).

*Respondents:* Not-for-profit institutions.

*Estimated Number of Recordkeepers:* 1.

*Estimated Burden Hours Per Recordkeeper:* 1 hour.

*Estimated Total Recordkeeping Burden:* 1 hour.

*OMB Number:* 1545–0874.

*Form Number:* IRS Form 8328.

*Type of Review:* Extension.

*Title:* Carryforward Election of Unused Private Activity Bond Volume Cap.

*Description:* Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

*Respondents:* Business or other for-profit, State, Local or Tribal Government.

*Estimated Number of Respondents/ Recordkeepers:* 10,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—6 hr., 13 min.
Learning about the law or the form—2 hr., 11 min.
Preparing and sending the form to the IRS—2 hr., 23 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 107,800 hours.

*OMB Number:* 1545–0915.

*Form Number:* IRS Form 8332.

*Type of Review:* Extension.

*Title:* Release of Claim to Exemption for Child of Divorced or Separated Parents.

*Description:* This form is used by the custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 150,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—7 minutes.
Learning about the law or the form—5 minutes.
Preparing the form—7 minutes.
Copying, assembling, and sending the form to the IRS—14 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 82,500 hours.

*OMB Number:* 1545–0954.

*Form Number:* IRS Form 1120–ND.

*Type of Review:* Extension.

*Title:* Return for Nuclear Decommissioning Funds and Certain Related Persons.

*Description:* A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash or the dismantling of a nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 100.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—23 hr., 12 min.
Learning about the law or the form—3 hr., 7 min.
Preparing the form—5 hr., 30 min.
Copying, assembling, and sending the form to the IRS—32 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 3,236 hours.

*OMB Number:* 1545–1013.

*Form Number:* IRS Form 8612.

*Type of Review:* Extension.

*Title:* Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

*Description:* Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 20.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—6 hr., 13 min.
Learning about the law or the form—1 hr., 41 min.
Preparing and sending the form to the IRS—1 hr., 52 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 195 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 98–17333 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 19, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 30, 1998 to be assured of consideration.

### Financial Crimes Enforcement Network (FinCEN)

*OMB Number:* 1506–0009.

*Form Number:* TD F 90–22.1.

*Regulation Parts:* 31 CFR Parts 103.22, 103.23, 103.24, 103.25, 103.26, 103.27, 103.28, 103.29, 103.32, 103.33, 103.34, 103.35, 103.36, 103.37, 103.38, 103.43, 103.45, 103.54, 103.71, 103.72, 103.72, 103.73, 103.75, 103.76 and 103.77.

*Type of Review:* Extension.

*Title:* Financial Recordkeeping and Reporting of Currency and Foreign Transactions; and, Report of Foreign Bank and Financial Accounts (TD F 90–22.1).

*Description:* This information collection, which applies primarily to financial institutions, assists Federal, State and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking and other crimes. The information collection also assists in the examination and other regulatory matters.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 140,000.

*Estimated Total Annual Responses:* 13,000,000.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 11,529,711 hours .

*Clearance Officer:* Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 98–17334 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

June 23, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 30, 1998 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0134.

*Form Number:* IRS Form 1128.

*Type of Review:* Revision.

*Title:* Application to Adopt, Change, or Retain a Tax Year.

*Description:* Form 1128 is needed in order to process taxpayers' request to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms

*Estimated Number of Respondents/Recordkeepers:* 11,800.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 1128 parts I and II | Form 1128 parts I and III. |
|---|---|---|
| Recordkeeping | 9 hr., 34 min | 16 hr., 59 min. |
| Learning about the law or the form | 3 hr., 23 min | 4 hr., 56 min. |
| Preparing and sending the form to the IRS | 3 hr., 41 min | 6 hr., 38 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 282,002 hours.

*OMB Number:* 1545–0633.

*Notice Number:* Notices 437, 438 and 466.

*Type of Review:* Extension.

*Title:* Notice of Intention to Disclose.

*Description:* Notice is required by 26 U.S.C. 6110(f). A reply is necessary if recipient disagrees with the Service's proposed deletions. The Service uses the reply to consider propriety of making additional deletions to public inspection version of written determinations or related background file documents.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

*Estimated Number of Respondents:* 2,500.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1,250 hours.

*OMB Number:* 1545–0820.

*Regulation Project Number:* EE–86–88 NPRM (Previously 279–81).

*Type of Review:* Extension.

*Title:* Incentive Stock Options.

*Description:* The affected public includes corporations that transfer stock to employees after 1979 pursuant to the exercise a statutory stock option. The corporation must furnish the employee receiving the stock with a written statement describing the transfer. The statement will assist the employee in filing their tax returns.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 50,000.

*Estimated Burden Hours Per Respondent:* 20 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 16,650 hours.

*OMB Number:* 1545–1081.

*Form Number:* IRS Form 8809.

*Type of Review:* Revision.

*Title:* Request for Extension of Time to File Information Returns.

*Description:* Form 8809 is used to request an extension of time to file certain information returns. It will be used by IRS to process request expeditiously and to track from year to year those who repeatedly ask for an extension.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents/Recordkeepers:* 50,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—2 hr., 4 min.
Learning about the law or the form—10 min.
Preparing and sending the form to the IRS—26 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 133,000 hours.

*OMB Number:* 1545–1165.

*Form Number:* IRS Form 8821.

*Type of Review:* Revision.

*Title:* Tax Information Authorization.

*Description:* Form 8821 is used to appoint someone to receive or inspect certain tax information. Data is used to identify appointees and to ensure that confidential information is not divulged to unauthorized persons.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

*Estimated Number of Respondents/Recordkeepers:* 200,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—7 minutes.
Learning about the law and the form—12 minutes.
Preparing the form—24 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 210,000 hours.

*OMB Number:* 1545–1189.

*Form Number:* IRS Form 8819.

*Type of Review:* Extension.

*Title:* Dollar Election Under Section 985.

*Description:* Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondent/Recordkeepers:* 1,500.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—2 hr., 52 min.
Learning about the law or the form—1 hr., 17 min.
Preparing and sending the form to the IRS—1 hr., 23 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 8,325 hours.

*OMB Number:* 1545–1354.

*Form Number:* IRS Form 8833.

*Type of Review:* Revision.

*Title:* Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

*Description:* Form 8833 is used by taxpayers that are required by section 6114 to disclose a treaty-based return position to disclose that position. The form may also be used to make the treaty-based position disclosure required by regulations section 301.7701(b)–7(b) for ''dual resident'' taxpayers.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 6,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—3 hr., 7 min.
Learning about the law or the form—1 hr., 35 min.
Preparing and sending the form to the IRS—1 hr., 43 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 38,460 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 98–17335 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 23, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 15, 1998 to be assured of consideration.

**SPECIAL REQUEST:** In order to conduct the surveys described below in a timely manner, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 2, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1432.

*Project Number:* M:SP:V 98–013–G.

*Type of Review:* Revision.

*Title:* Internal Revenue Service's Fourth Annual Survey of Contractors.

*Description:* The purpose of this survey is to attempt to obtain contractor information about the ways the Internal Revenue Service (IRS) can improve its contracting. An opinion survey is expected to provide the information needed.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 250.

*Estimated Burden Hours Per Respondent:* 7 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 250 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 98–17336 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

**[Treasury Directive Number 13–04]**

### Delegation of Authority Relating to the United States Enrichment Corporation Privatization

June 24, 1998.

1. *Purpose.* This Directive makes certain delegations to the Assistant Secretary (Financial Markets) relating to the United States Enrichment Corporation (USEC) privatization.

2. *Background.* The Atomic Energy Act of 1954 as amended by the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2938), and the USEC Privatization Act (Pub. L. 104–134, 110 Stat. 1321–335) (collectively, the ''Acts'') authorize the Secretary of the Treasury to approve or disapprove the USEC Board's determinations that the method of transfer and the terms and conditions for the transfer of USEC to the private sector meet certain statutory requirements under the Acts. Treasury Order (TO) 103–04, ''Delegation of Authority Relating to the United States Enrichment Corporation Privatization,'' delegates to the Under Secretary for Domestic Finance the Secretary's authority under the Acts relating to the USEC privatization.

3. *Delegation.* The duties, powers, rights, and obligations of the Secretary of the Treasury which are vested in the Under Secretary for Domestic Finance pursuant to TO 103–04 are hereby redelegated to the Assistant Secretary (Financial Markets).

4. *Redelegation.* The Assistant Secretary (Financial Markets) may redelegate in writing such of the authorities granted under this Directive as the Assistant Secretary (Financial Markets) deems appropriate.

5. *Authority.* TO 103–04, ''Delegation of Authority Relating to the United States Enrichment Corporation Privatization.''

6. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

7. *Office of Primary Interest.* Office of the Under Secretary for Domestic Finance.

**John D. Hawke, Jr.,**

*Under Secretary for Domestic Finance.*

[FR Doc. 98–17373 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

**[Treasury Order Number 103–04]**

### Delegation of Authority Relating to the United States Enrichment Corporation Privatization

Dated: June 24, 1998

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b), I hereby delegate to the Under Secretary for Domestic Finance the authority of the Secretary of the Treasury under the Atomic Energy Act of 1954 as amended by the Energy Policy Act of 1992 (Public Law 102–486, 106 Stat. 2938), and the USEC Privatization Act (Public Law 104–134, 110 Stat. 1321–335) (collectively, the ''Acts''), to exercise any right or power, make any finding or determination, or perform any duty or

obligation which the Secretary of the Treasury is authorized to exercise, make, or perform under the Acts relating to the privatization of the United States Enrichment Corporation.

2. This authority may be redelegated in writing to an appropriate subordinate official.

**Robert E. Rubin,**

*Secretary of the Treasury.*

[FR Doc. 98–17372 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** For the period beginning July 1, 1998 and ending on December 31, 1998 the prompt payment interest rate is 6% (6) per centum per annum.

**DATES:** This notice announces the interest rate applicable for the July 1, 1998 to December 31, 1998 period.

**ADDRESSES:** Comments or inquiries may be mailed to Sandra K. Jones, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be made available for downloading from the http://www.publicdebt.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Brown, Debt Accounting Branch Manager, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5171, Sandra K. Jones, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5174, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5192, or Brenda L. Hoffman, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5198.

**SUPPLEMENTARY INFORMATION:** Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub. L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Pub. L. 95–563, 92 Stat. 2389 and the Prompt Payment Act of 1982 Sec. 2, Pub. L. 97–177, 96 Stat. 85 provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3902(a).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1998 and ending on December 31, 1998, is 6 per centum per annum.

Dated: June 25, 1998.

**Donald V. Hammond,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 98–17475 Filed 6–26–98; 12:56 pm]

BILLING CODE 4810–39–P

# Corrections

Federal Register
Vol. 63, No. 125
Tuesday, June 30, 1998

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 ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98-2-127-002]**

### Cove Point LNG Limited Partnership; Notice of Compliance Filing

*Correction*

In notice document 98–16721, beginning on page 34370, in the issue of Wednesday, June 24, 1998, the docket number should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC98-2-000; FERC Form 2]**

### Proposed Information Collection and Request for Comments

*Correction*

In notice document 98–16712, appearing on page 34369, in the issue of Wednesday, June 24, 1998, the docket number should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 3721-001, 4270-001, 4282-001, 4312-001, 4628-001, 4738-002 and 9231-000]**

### Puget Sound Power & Light Company, Mountain Rhythm Resources, Mountain Water Resources, Watersong Resources, McGrew and Associates and City of Tacoma, Washington, McGrew, McMaster and Koch and City of Tacoma, Washington, and Scott Paper Company; Notice of Motion for Declaratory Order

*Correction*

In notice document 98–16715, beginning on page 34372, in the issue of June 24, 1998, the docket number should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–1998–3350]**

### Public Workshops for Response Plan Equipment Caps: Scheduled Increases in Mechanical Recovery and Potential Changes to Dispersant Planning Requirements

*Correction*

In notice document 98–16780, beginning on page 34500 in the issue of Wednesday, June 24, 1998, in the third column, under **FOR FURTHER INFORMATION CONTACT:**, in the eighth line ''jcapliscomdt.uscg.mil'' should read ''jcaplis@comdt.uscg.mil''.

BILLING CODE 1505-01-D

federal register

Tuesday
June 30, 1998

# Part II

# Department of Transportation

## Federal Aviation Administration

## 14 CFR Part 23

## Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

**RIN 2120–AD27**

## Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM); withdrawal.

**SUMMARY:** The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that proposed to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. That notice proposed an upgrade in the requirements for both seat/restraint systems and for flammability standards for seat cushions used in commuter category airplanes. It also proposed an increase in the downward inertia load factor for items of mass within the cabin for all normal, utility, acrobatic, and commuter category airplanes. The FAA is developing a new proposal based on information gathered subsequent to the NPRM.

**DATES:** This proposed rule is withdrawn as of June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michael Downs, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

**SUPPLEMENTARY INFORMATION:** On July 14, 1993, the FAA published Notice of Proposed Rulemaking No. 93–71 (58 FR 38028) to propose an amendment to 14 CFR part 23 and invited public comment. During the comment period, the General Aviation Manufacturers Association (GAMA) objected to the proposed rule. GAMA's September 17, 1993, letter to the docket stated the following: ''The docket for the rule did not contain data on several recent accidents of 10–19 passenger airplanes operated under 14 CFR part 135 rules, which indicated that those accidents occurred at crash conditions approaching those of a flat impact crash. The FAA considered it necessary to evaluate the flat impact crash condition when conducting the analysis leading to the proposals in this notice. Because FAA bases certain of the criteria in this proposal on these data and analyses therefore, industry cannot appropriately comment on this proposal until the supporting data are made available for public evaluation.'' The report GAMA referenced, ''Commuter Airplane Accident Data Analysis,'' was published in August 1994. The FAA reopened the comment period on November 4, 1994; it closed on March 4, 1995.

Many of the general comments addressed the accuracy of the derived safety benefits of the rule and questioned how the safety benefits could be evaluated independently from the benefits expected of other recently adopted rules. Several commenters questioned the use of a 15-year life expectancy for seats utilizing fireblocking materials when their commercial experience indicated an average life expectancy of four years.

On March 29, 1995, Notice No. 95–5, ''Commuter Operations and General Certification and Operations Requirements,'' was published. This rulemaking effort proposed, in part, to move all scheduled part 135 operations with ten passenger seats or more to 14 CFR part 121 operations and for newly type certificated airplanes operating in accordance with part 121 to be type certificated under part 25. Since most airplane manufacturers of part 23 commuter category airplanes design their airplanes to be operated in accordance with part 135, the proposed rule affected the applicability of part 23 certification requirements for airplanes operating in scheduled service with ten or more passenger seats. On January 19, 1996, the ''Commuter Operations and General Certification and Operations Requirements'' final rule was adopted as amendment 121–151. As a result, the FAA re-evaluated the cost analysis for Notice 93–71. With the removal of scheduled part 135 aircraft, the proposed amendment would no longer be cost-beneficial. With the adoption of amendment 121–151, the projected benefits of the dynamic seat testing and flammability requirements proposed in Notice No. 93–71 have been negated.

Other commenters addressed the stringency of the proposed rule when compared to the existing requirements for similarly sized small transport category airplanes. The FAA cannot agree that such a comparison is valid. The 14 CFR part 25 transport category airplane seat dynamic performance standards were defined using data that were representative of the impact response characteristics of large (narrow or wide body) transport category airplanes. The structural depth under the floor and impact energy absorption characteristics of these airplanes is considerably greater than that for commuter category airplanes and small transport category airplanes. In light of these differences, the use of part 25 transport category airplane standards for commuter category airplanes would not provide adequate protection. The FAA is considering amending both part 23 and part 25 standards to make them consistent for commuter category and small transport category airplanes.

Additional comments stated that the maximum acceleration levels proposed were unrealistically high and would require excessive energy absorption designs. The FAA disagrees. Energy absorbing seats have been designed and tested at the Civil Aeromedical Institute (CAMI) to the combined longitudinal and vertical test conditions found in Notice No. 93–71, and those seats met the requirements of the proposed rule. Those tests demonstrated that the minimum requirements for providing occupant spinal column/pelvic load protection can be provided with seats that have four inches of seat stroke or energy absorption capability. Full-scale commuter category airplane impact tests conducted with the CAMI energy absorbing seats on board have confirmed the above CAMI test lab finding.

In consideration of those comments to Notice No. 93–71 regarding the cost-benefit analysis and the effect of amendment 121–151, the Federal Aviation Administration has decided to withdraw Notice No. 93–71. Instead, the FAA is planning to task the Aviation Rulemaking Advisory Committee (ARAC) to amend both part 25 transport category airplane standards and part 23 to make them consistent for commuter category and small transport category airplanes.

In addition, the FAA plans to initiate a new rulemaking project to propose seat cushion fireblocking provisions for new type certificated commuter category airplanes. Accordingly, Notice No. 93–71, published on July 14, 1993 (58 FR 32028), is withdrawn.

Issued in Washington, DC on June 22, 1998.

**Thomas E. McSweeny,**

*Director, Aircraft Certification Service.*

[FR Doc. 98–17291 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
June 30, 1998

# Part III

# Department of Housing and Urban Development

## 24 CFR Parts 5, 207, et al.

## Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Proposed Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 207, 266, 880, 881, 882, 883, 884, 886, 891, 965, and 983**

**[Docket No. FR–4280–P–01]**

**RIN 2501–AC45**

## Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish for housing assisted under certain HUD programs uniform physical condition standards. These standards are intended to ensure that such housing is decent, safe, sanitary and in good repair. HUD's Section 8 housing, Public Housing, HUD-insured multifamily housing, and other HUD assisted housing (collectively, HUD housing) currently must meet certain standards and must undergo an annual physical inspection to determine that the housing qualifies as decent, safe, sanitary and in good repair. The description or components of what constitutes acceptable physical housing quality and the physical inspection procedures by which the standards are determined to be met, however, vary from HUD program to HUD program. To the extent possible, HUD believes that housing assisted under its programs should be subject to uniform physical standards, regardless of the source of the subsidy or assistance. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs. Therefore, this rule proposes that certain HUD housing, as defined in this rule, must meet uniform physical condition standards to ensure that the HUD housing is decent, safe, sanitary and in good repair. This rule also generally describes new physical inspection procedures that will allow HUD to determine conformity with such standards. This rule would not change the requirement for annual physical inspections currently found in the covered HUD programs. Additionally, this rule would not affect the existing requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection of the program.

**DATES:** Comments must be submitted on or before July 30, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the Real Estate Assessment Center, Attention: William Thorson, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–0102. Persons with hearing and speech impairments may contact the Center via TTY by calling the Federal Information Relay Service at (800) 877–8399.

**SUPPLEMENTARY INFORMATION:**

### I. Background—Statutory Directive To Provide Decent, Safe, and Sanitary Housing

''The Declaration of Policy'' in section 2 of the United States Housing Act of 1937 (42 U.S.C. 1437) (1937 Act) provides in relevant part as follows:

> It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this Act, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of *decent, safe, and sanitary* dwellings for families of lower income * * *. (Emphasis added)

More recently, in the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990; 42 U.S.C. 12701 *et seq.*), the Congress reaffirmed the nation's housing policy. Section 102 of this statute (42 U.S.C. 12702) states in relevant part as follows:

> The objective of national housing policy shall be to reaffirm the long-established national commitment to *decent, safe, and sanitary* housing for every American by strengthening a nationwide partnership of public and private institutions.

The housing standard set by the Congress as the standard for all American families is one of decent, safe, and sanitary housing. As the statutes cited above reflect, this is also the standard by which HUD housing should be evaluated.

### II. Current Requirements Governing Physical Condition and Property Maintenance Standards for HUD Housing

The majority of HUD programs currently contain requirements governing the physical condition and maintenance of the housing. In discussing the various housing that is proposed to be covered by this rule (Section 8 project-based housing, Public Housing, HUD-insured multifamily housing, and other HUD-assisted housing) the term ''HUD housing'' is used for purposes of brevity.

#### Current Standards Applicable to Section 8 Housing

HUD's Section 8 project-based assistance is provided under the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, Moderate Rehabilitation (including the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) program for homeless individuals), and project-based Certificate programs. The statutory physical condition standard for all Section 8 housing is ''decent, safe, and sanitary.'' Specifically, section 2 of the 1937 Act, as noted above, declares the statutory policy to provide assistance for low-income individuals in ''decent, safe, and sanitary'' dwellings in the Section 8 (and Public Housing) program. Additionally, section 3(b)(1) of the 1937 Act defines the term ''low-income housing,'' which term includes Public Housing and housing receiving Section 8 assistance, as ''decent, safe, and sanitary dwellings assisted under this Act.''

The various forms of Section 8 Housing Assistance Payments (HAP) Contracts covering all of these Section 8 programs contain broad references to the quality or the physical condition of the housing that must be maintained, language that is similar to the 1937 Act language. While there is some minor variation in language, these contracts generally require owners to maintain project units and related premises in decent, safe, and sanitary condition.

The program regulations for each of the Section 8 programs provide the substantive physical condition standards for each program, but they differ somewhat from one another. For the Section 8 New Construction and Substantial Rehabilitation programs, the regulations provide that housing is decent, safe, and sanitary if it is maintained in a condition substantially the same as at the time of acceptance (see 24 CFR 880.201 and 881.201). Section 8 New Construction projects

also must comply with HUD minimum property standards;[1] applicable State and local laws, codes, ordinances, and regulations; HUD requirements pertaining to noise abatement and control; and HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for ''projects for the elderly or handicapped'' (24 CFR 880.207). Section 8 Substantial Rehabilitation projects must comply with HUD minimum design standards for rehabilitation for residential properties;[2] applicable State and local laws, codes, ordinances, and regulations; HUD noise abatement and control requirements; and HUD section 209 requirements (24 CFR 881.207). The requirements in §§ 880.207 and 881.207 generally relate to design, construction, and rehabilitation standards, rather than to physical maintenance requirements. This proposed rule only addresses physical condition after completion of construction and/or rehabilitation. This rule does not propose to revise the design, construction, and rehabilitation standards currently found in HUD regulations.

Additionally, this rule does not propose to revise the housing quality standards (HQS) applicable to the Section 8 Certificates and Vouchers program. As discussed later in this preamble, HQS will remain applicable to the Section 8 Certificates and Vouchers Program.

*Current Standards Applicable to Public Housing*

HUD Public Housing is also subject to a standard of decent, safe, and sanitary. Section 3(b)(1) of the 1937 Act provides in relevant part as follows:

> The term *low-income housing* means decent, safe, and sanitary dwellings assisted under this Act. The term ''public housing'' means low-income housing, and all necessary appurtenances thereto, assisted under this Act other than under section 8.

Section 14 of the 1937 Act, which addresses Public Housing modernization, also emphasizes a decent, safe, and sanitary housing standard. Section 14(j)(2) provides, in relevant part, that ''the Secretary shall issue rules and regulations establishing standards which provide for decent, safe, and sanitary living conditions in low-rent public housing projects * * *.'' In addition to the references to the decent, safe, and sanitary standard, other sections of the 1937 Act refer to the ''obligation'' of a public housing agency (PHA) to inspect and maintain the Public Housing units in the PHA's projects. For example, in connection with the Public Housing Management Assessment Program (PHMAP), established by section 6(j) of the 1937 Act, section 6(j)(1)(G) requires the PHA to inspect the units to ascertain ''maintenance or modernization needs.''

The current regulatory provisions addressing the physical condition of Public Housing projects are found in several sections of HUD's regulations in Title IX of 24 CFR: §§ 901.30 (of the PHMAP regulations), 941.203 (of the Public Housing Development regulations), 965.704 (of the PHA-Owned or Leased Projects regulations), and 968.315 (of the Comprehensive Improvement Program Regulations). In the current Public Housing Development regulations, § 941.203 (Design and construction standards) provides that Public Housing projects must comply with a national building code; applicable State and local laws, codes, ordinances, and regulations; and other Federal requirements, including fire safety requirements and HUD minimum property standards. (HUD's minimum property standards are found in 24 CFR part 200, subpart S, and remain applicable to Public Housing as design and construction standards.)

As noted earlier in this preamble, Public Housing is not only currently subject to a standard of ''decent, safe, and sanitary'' housing, there is also a statutory obligation on the PHA to inspect Public Housing units (see section 6(j) of the 1937 Act). This requirement is found in the current Public Housing Management Assessment Program (PHMAP) regulations (see 24 CFR 901.30). Section 901.30, captioned ''Indicator #5, Annual Inspection of Units and Systems,'' provides in relevant part that: ''All occupied units are required to be inspected.'' This proposed rule would not change the current requirement that PHAs inspect all of their units annually to determine maintenance and modernization needs. However, through a separate rulemaking, HUD is proposing new assessment regulations for Public Housing under which PHAs would be required to maintain their units in accordance with the same decent, safe, and sanitary standard proposed in part 5, subpart G of this rule.

*Current Standards Applicable to Insured Multifamily Housing*

Generally, in HUD-insured multifamily housing, the mortgagors are subject, by contract, to maintain the mortgaged premises, accommodations, and the grounds appurtenant thereto, in good repair and condition. Additionally, HUD's standard mortgage form requires the mortgagor to keep the premises in good repair. Although existing FHA regulations and supplementary materials (such as handbooks) do not provide exact details on what is meant by ''good repair,'' the ''good repair'' standard is very similar if not identical to the ''decent, safe, and sanitary'' standard. For example, HUD Handbook 4350.1 REV–1, Multifamily Asset Management and Project Servicing, provides that in determining the level of management review HUD should perform on site, it should review the mortgagee's annual physical inspection ''to determine if the condition of the property is consistent with the provision of ''*decent, safe, and sanitary housing*'' (emphasis added). For HUD-owned projects, section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701–z–11) provides that HUD shall manage or dispose of HUD-owned projects and projects covered by a HUD-held mortgage in a manner that will, in the least costly fashion among reasonable available alternatives, address the goal of maintaining existing housing stock in a ''decent, safe, and sanitary condition,'' among other things.

*Summary of Current Applicable Standards*

While Section II of the preamble does not address all the various HUD programs that contain housing physical condition standards and physical inspection requirements, the section provides examples of the similarities and differences in housing standards and inspection requirements to which certain HUD subsidized, assisted, and/or insured housing is currently subject under various HUD programs. These standards are found throughout HUD regulations, and are also supplemented by HUD handbooks, contracts, agreements, and other documents. Although several sets of housing standards apply to HUD housing, HUD finds it warranted, by the proper administration of its duties, to apply a uniform set of physical condition standards to the housing related to HUD's Section 8 (project-based assistance only), Public Housing,

[1] The minimum property standards pertain to HUD requirements for site design, building design, materials, and construction of projects. An owner has the obligation to maintain a project constructed in accordance with the minimum property standards in a condition ''substantially the same as at the time of [its] acceptance'' (24 CFR 880.201).

[2] The HUD minimum design standards contain the basic HUD requirements for the rehabilitation of projects. An owner has the obligation to maintain a project rehabilitated in accordance with the minimum design standards in a condition ''substantially the same as at the time of [its] acceptance'' (§ 881.201).

Section 202/811 Supportive Housing, and multifamily mortgage insurance programs. (As described below, HUD's Section 8 Certificate and Voucher Programs will continue to be subject to the existing housing quality standards (HQS) set forth in HUD's regulations in 24 CFR part 982.) However, in adopting uniform physical condition standards for HUD housing, this proposed rule would not alter the statutory standard for maintaining HUD housing. Instead, this proposed rule, by using the statutory terminology, clearly acknowledges that the physical condition of the housing that is to be met is one of ''decent, safe, and sanitary.''

## III. Proposed Uniform Physical Condition Standards

Through this rule, HUD proposes uniform physical condition standards that will serve to determine whether certain HUD housing is decent, safe, sanitary and in good repair. HUD also proposes that these standards be evaluated through uniform physical inspection procedures. These proposed standards and inspection process are intended to achieve three significant objectives:

(1) Consistency in physical condition standards for HUD housing;

(2) Standardization of the inspection to be undertaken to determine compliance with the standards; and

(3) Implementation of an electronically-based inspection system to evaluate, rate and rank the physical condition of HUD housing objectively.

### *HUD Programs Covered by the New Standards*

The proposed new physical condition standards will apply to housing assisted by HUD under the following programs (Section V of this preamble discusses the specific regulatory parts and sections that are proposed to be amended). In this rule, the various types of HUD housing that are proposed to be subject to the new physical condition standards, as set forth in paragraphs (1) through (3) below, are collectively referred to as ''HUD housing.''

1. Section 8 Project-Based and Other Assisted Housing

—Section 8 Project-Based Assistance, including the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals), and project-based Certificate programs;

—Section 202 Program of Supportive Housing for the Elderly;

—Section 811 Program of Supportive Housing for Persons with Disabilities; and

—Section 202 Loan Program for Projects for the Elderly and Handicapped (including 202/8 projects and 202/162 projects).

While this proposed rule covers Section 8 project-based assistance, as described above, this proposed rule would not cover Section 8 tenant-based assistance (i.e., housing assisted by HUD's Section 8 Certificate and Vouchers Rental Assistance Program; see 24 CFR part 982). The housing quality standards (HQS) were originally established by the Secretary for the purpose of Section 8 tenant-based housing assistance. Unlike Section 8 project-based assistance, HUD is continuously reviewing and approving new units into the Section 8 tenant-based assistance programs, and HUD has found that HQS is appropriate for this purpose. As discussed earlier in this rule, HUD believes that all of its programs should be subject to the same uniform physical inspection requirements. HUD also believes that it would be appropriate to require the Section 8 Certificate and Voucher (tenant-based assistance) programs to be subject to the uniform standards. However, HUD is not proposing at this time to apply the new uniform standards to such housing, but instead will consider doing so at a later date.

2. FHA Multifamily Housing

The proposed standards also will apply to multifamily housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

—Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

—Section 213 of the NHA (Cooperative Housing Insurance);

—Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

—Section 221(d) (3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

—Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

—Section 231 of the NHA (Housing for Elderly Persons);

—Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

—Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

—Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

—Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

—Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

The proposed standards would not apply to housing insured under HUD's single family mortgage insurance programs. Section 5.701(b)(1) of this proposed rule lists those sections of the National Housing Act that specifically give the Secretary authority to insure mortgages. Sections of the NHA that give the Secretary authority to insure mortgages ''pursuant to'' another section of the NHA are not listed in the coverage of § 5.701 of this proposed rule, because HUD ultimately has insured the mortgages under one of the listed statutory sections.

3. Public Housing

—Housing receiving assistance under sections 5, 9 or 14 of the U.S. Housing Act of 1937.

Through a separate rulemaking, HUD is proposing new assessment regulations for Public Housing under which PHAs would be required to maintain their units in accordance with the same decent, safe, and sanitary standard proposed in part 5, subpart G of this rule. Under the HUD 2020 Management Reform Plan, published in the **Federal Register** on August 12, 1997 (62 FR 43204), HUD is seeking new tools to strengthen its abilities to ensure the soundness and physical condition of Public Housing. Consistent with HUD's responsibilities under the new Real Estate Assessment Center, HUD intends to conduct independent inspections of a statistically valid number of Public Housing units for each PHA, in order to confirm compliance with the new uniform physical condition standards.

Although HUD encourages PHAs to use its inspection software during the course of their own annual inspections in order to promote uniformity in inspections, HUD is not proposing at this time to require PHAs to use HUD's inspection software for two reasons. First, PHAs may have existing software for operations (e.g., work order systems) that may be incompatible with the HUD software. It would be unreasonable and uneconomical to require PHAs to change their existing systems. Second, PHAs may, as a part of their operating procedures, combine other inspections (e.g., housekeeping, preventative

maintenance) with their annual unit inspections. HUD believes that its role, consistent with section 2 of the U.S. Housing Act of 1937 (42 U.S.C. 1437), is to prescribe broad standards, giving PHAs maximum latitude as to how best to meet those standards consistent with existing statutes, regulations, and their own operating procedures and practices. HUD has no objection, however, if the PHA determines that use of the HUD software for its own purposes is in its best interests.

*Standards for Determining Housing That Is Decent, Safe, Sanitary and in Good Repair*

The uniform standards in this proposed rule would set parameters under which the HUD housing must be maintained and will be evaluated. These standards are designed to analyze, score, and rank the overall and general physical condition of a project. This evaluation would not focus on a single element, but would take into consideration significant observable deficiencies and score compliance taken as a whole. A single critical element with a major defect (for example, an inoperable heating system), however, could have a significant impact on a project's overall evaluation. The proposed standards emphasize health and safety considerations as essential to housing that is decent, safe, sanitary and in good repair.

The physical condition standards are intentionally broad and are defined with terms such as in ''proper operating condition,'' ''adequately functional,'' and ''free of health and safety hazards.'' Given the differences in construction and design of HUD housing, and the different types of electrical and utility systems that an inspector will encounter, the rule cannot define or describe proper operating condition for every type of system. For example, an inspection of whether an electrical heating system is operating properly might be different from an inspection of whether an oil-based heating system is operating properly. This would not mean, however, that these two systems should be subject to a different physical condition standard. The standard—proper operating condition—is the same for both types of systems and is the same for all heating systems.

The uniform physical condition standards in this proposed rule do not include design or configuration requirements for housing (e.g., these standards do not require that every unit have a kitchen). The regulations for the individual housing programs will continue to contain any such design or configuration requirements. The uniform physical condition standards in this proposed rule are structured so that regardless of the configuration of a particular project or unit (for example, a shared kitchen versus private kitchens), the project or unit would be inspected under the uniform standards. Similarly, the proposed standards do not address occupancy requirements of a dwelling unit, that is, the number of residents per unit. The proposed standards are solely concerned with the physical condition of the housing and the operational state of its various elements, to the extent relevant.

The proposed new standards address six major areas of the HUD housing:

(1) Site;
(2) Building exterior;
(3) Building systems;
(4) Dwelling units;
(5) Common areas; and
(6) Health and safety.

Under this proposed rule, the major areas of the HUD housing and their related elements are to be maintained in a manner that is decent, safe, sanitary and in good repair. Intrinsic to all these areas are health and safety considerations. However, there are other broad health and safety concerns that HUD will evaluate at any time they are observed. Since HUD places such a high priority on health and safety concerns, this proposed rule identifies them separately.

*1. Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

*2. Building Exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

*3. Building Systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

*4. Dwelling Units.* Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit must be free of health and safety hazards. The unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC, kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows (where applicable) must be free of health and safety hazards, functionally adequate, operable, and in good repair. Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units may not contain water facilities). If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. Properties that are subject to the specific requirements of the Fire Administration Authorization Act must also comply with those requirements.

*5. Common Areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas would apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

*6. Health and Safety Considerations.* All areas and components of the housing must be free of health and safety hazards. As discussed in the preceding section, the five other major inspectable areas contain health and safety considerations that will be evaluated in the applicable areas. In addition, there are broad health and safety concerns by which HUD will evaluate the housing. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based

paint. For example, the buildings must have fire exits that are not blocked and are accessible to all residents, and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

With regard to the evaluation and reduction of lead-based paint hazards, HUD is developing consolidated final regulations to implement sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992 (42 U.S.C 4851 *et seq.*). These final regulations will be based upon a proposed rule published on June 7, 1996 (61 FR 29170), and will be codified in 24 CFR part 35.

*No Preemption of State and Local Building and Maintenance Codes.* The new uniform physical condition standards in this rule would not supersede or preempt State and local building and maintenance codes with which HUD housing must comply. HUD housing must continue to adhere to these codes.

## IV. Proposed Uniform Physical Inspection Requirements

### *Frequency of Inspection*

To make a determination of whether the owner is providing HUD housing that is decent, safe, sanitary and in good repair, this rule proposes to continue the practice currently found in HUD programs of requiring a physical inspection of each HUD housing structure (except that Public Housing shall be inspected as described below). This proposed rule would require such inspections annually, unless HUD provides notice to the contrary. HUD housing is currently subject to an annual inspection requirement; therefore, an annual inspection would impose no new requirement.

### *The New Inspection Protocol*

Along with the uniform physical condition standards proposed in this rule, HUD intends to implement a new computer-driven physical inspection protocol. The inspection would not have to be performed by an engineer or architect, but may be performed by a person who is generally familiar with real estate of the type to be inspected. Any eligible individual who is trained and certified under HUD auspices to use the new HUD computer program may conduct the inspection. The inspector will complete the inspection using a hand-held computer that uses the HUD software. The new HUD computer program would guide the inspector through the inspection, prompting the necessary observations to be made regarding the condition of the property. The computer program is based on substantially objective observations, which will tend to eliminate the uncertainty of subjective interpretation of the physical condition standards. The results of the inspection will be electronically transferred to HUD and will be processed and scored by electronic means and recorded in a Central Integrated Data Repository.

### *Determining Whether HUD Housing Meets the New Physical Condition Standards*

The determination of whether the HUD housing meets the standard of decent, safe, sanitary and in good repair would be based on a review of observable deficiencies of the health and safety conditions, the site, the building, the dwelling units, and the common areas of such housing. The computer program will generate a score for these major areas and their respective elements. The scores will allow HUD to rank the housing according to physical condition as determined by the computer-based inspection.

Inherent in such a scoring system is the weighting of factors that make up the physical condition standards. For instance, health and safety hazards are of utmost importance to HUD; therefore, these factors, as well as other key components of the building (i.e., roof, walls, heating) might be more heavily weighted in the scoring. Other factors that are less crucial to health and safety, although still related to housing that is decent, safe, sanitary and in good repair, might receive a lower weight. For example, a faulty roof would generally be weighed more heavily than a faulty sidewalk, because it could generally have a greater impact on the residents' health and safety. The evaluation system will create a composite score for HUD housing by calculating the component scores on a weighted average basis.

## V. Regulatory Amendments

### *New Subpart for Physical Condition Standards and Inspection Requirements*

This rule proposes to create a new subpart G in 24 CFR part 5. The regulations in part 5 represent HUD's general program requirements, as well as requirements that cut across one or more HUD programs. This new subpart G would consist of three sections. Section 5.701 would provide the lists of the types of HUD housing to which the uniform physical condition standards and inspection requirements would apply. This section also would describe the unique applicability of the proposed requirements to the Public Housing program, as described above.

Section 5.703 would contain the physical condition standards for HUD housing that is decent, safe, sanitary and in good repair. These are the standards to which HUD housing must be maintained. Section 5.705 would simply provide that any entity responsible for conducting a physical inspection of HUD housing must inspect such housing annually (unless HUD provides notice to the contrary), in accordance with HUD-prescribed physical inspection procedures. This rule would not affect the existing requirements under each covered HUD program regarding which entity is responsible for conducting the physical inspection. HUD intends to provide more details with respect to the implementation of its physical inspection system through notices and other guidance materials.

### *Conforming Amendments in Program Regulations*

In accordance with the proposed physical condition standards and inspection requirements, this rule also proposes to make several conforming amendments to HUD's program regulations.

1. *24 CFR part 207; Multifamily Housing Mortgage Insurance.* This rule proposes to add a new § 207.260, which will provide that for FHA-insured multifamily properties, the mortgagor must maintain the insured project in accordance with the physical condition standards in the new subpart G of part 5. This section would also require the mortgagee to inspect the project in accordance with the requirements in subpart G of part 5. As described above, the requirements for the mortgagor to maintain the property in a condition that is decent, safe, sanitary and in good repair (and for the mortgagee to inspect the property) are not new. This rule provides a clear set of physical condition standards and inspection requirements to help ensure that these

properties are maintained in accordance with such obligations.

2. *24 CFR part 266; Housing Finance Agency (HFA) Risk-Sharing.* This rule proposes to add a new § 266.507 to provide that the mortgagor must maintain the project in accordance with the new physical condition standards in subpart G of part 5. This new section would apply the new standards to all projects insured previously or in the future. This rule also proposes to remove § 266.505(b)(6) regarding the maintenance requirements of the Regulatory Agreement between the HFA and the mortgagor, since the maintenance requirements would be in the new § 266.507. This rule would also amend § 266.510(a) to require HFAs to perform their inspections in accordance with the inspection requirements in subpart G of part 5.

3. *24 CFR part 880; Section 8 New Construction.* This rule proposes to amend § 880.201 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove paragraph (a) of § 880.207 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with these standards.

4. *24 CFR part 881; Section 8 Substantial Rehabilitation.* This rule proposes to amend § 881.201 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove paragraph (a) of § 881.207 regarding HUD's minimum design standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with these standards.

5. *24 CFR part 882; Section 8 (Project-Based) Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals).* HUD recently amended its regulations in part 882 to remove the regulatory provisions on certificates. These provisions are now in part 982. (Please see the Section 8 Certificate and Voucher Programs Conforming Rule, published in the **Federal Register** on April 30, 1998, 63 FR 23826.) The only regulatory provisions remaining in part 882 are for two Section 8 project-based programs—Moderate Rehabilitation and Single Room Occupancy for homeless individuals.

This rule proposes to amend part 882 further to recognize the new uniform physical condition standards. This rule would amend § 882.102 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule would also remove the definition of ''Housing Quality Standards'' from § 882.102, since those standards would be replaced by the new uniform physical condition standards in this proposed rule.

This rule would then amend § 882.404 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule would retain, however, the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule would not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint). Similarly, this rule would also amend § 882.803(b) for the SRO program by replacing references to the Housing Quality Standards with references to § 882.404.

6. *24 CFR part 883; Section 8 State Housing Agencies.* This rule proposes to amend § 883.302 to add a definition of the term ''Decent, safe, and sanitary.'' This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove the definition of ''MPS (Minimum Property Standards)'' in § 883.302, and paragraphs (a)(1) and (b)(1) of § 883.310 regarding HUD's minimum property and design standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with these standards.

7. *24 CFR part 884; Section 8 New Construction Set-Aside for Rural Rental Housing.* This rule proposes to amend § 884.102 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove the definition of ''Minimum property standards'' in § 884.102, and paragraph (b)(1) of § 884.110 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with those standards.

8. *24 CFR part 886; Section 8 Special Allocations (Loan Management Set-Aside (LMSA) and Property Disposition (PD)).* This rule proposes to amend §§ 886.102 (LMSA) and 886.302 (PD) to revise the definition of the term ''Decent, safe, and sanitary.'' This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also would amend §§ 886.113 (LMSA) and 886.307 (PD) by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule would retain, however, the specific occupancy requirements (i.e., the number of tenants per dwelling unit); such requirements are not addressed by the new uniform physical condition standards. This rule also would retain the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule would not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint).

9. *24 CFR part 891; Supportive Housing for the Elderly and Persons with Disabilities.* This rule would add a new § 891.180 to provide that housing assisted under these supportive housing programs must be maintained and inspected in accordance with the proposed physical condition standards and inspection requirements in subpart G of part 5.

10. *24 CFR part 965; PHA-Owned or Leased Projects—General Provisions.* This rule proposes to add a new subpart F (consisting of § 965.601) to part 965. Section 965.601 would require that housing that is owned or leased by a PHA must be maintained in accordance with the new uniform physical condition standards. Section 965.601 would also provide that for each PHA, HUD intends to perform independent inspections to confirm that Public Housing is being maintained in accordance with the new uniform physical condition standards using the proposed new inspection system, based upon a statistically valid sample of Public Housing units for each PHA.

11. *24 CFR part 983; Section 8 Project-Based Certificate Program.* This rule proposes to amend § 983.5 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule would retain, however, the specific occupancy requirements, since these requirements are not addressed by the new uniform physical condition standards. This rule also would retain the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule would not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the

separate regulations that are under development for lead-based paint).

## VI. Justification for 30-Day Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the announcement, through this rule, of HUD's proposal to establish a uniform set of physical condition standards and to establish a uniform inspection protocol has been developed with the participation of HUD's program participants, industry leaders, and experts in the real estate inspection industries. As also discussed in the preamble, in adopting uniform physical condition standards for HUD housing, this proposed rule would not alter the statutory standard for the maintenance of HUD housing, nor the existing requirement to conduct property inspection. HUD anticipates that making these standards uniform and consistent will ease the administrative burden for participants in the covered HUD programs, and therefore there is a benefit to making this standard effective at the earliest date possible. Given these reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of publication in the **Federal Register**. HUD will also directly notify entities that have expressed a significant interest to HUD by sending such entities a copy of this proposed rule.

## VII. Findings and Certifications

*Executive Order 12866*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule is not anticipated to have a significant economic impact on a substantial number of small entities. All HUD housing is currently subject to physical condition standards and a physical inspection requirement. As discussed in the preamble to this proposed rule, there are statutory directives to maintain HUD housing in a condition that is decent, safe, and sanitary. Accordingly, this proposed rule does not alter that requirement, nor does the proposed rule shift responsibility with respect to who conducts the physical inspection of the property. The entities and individuals currently responsible for the inspection of HUD subsidized properties would remain responsible. The proposed rule, however, provides for uniform physical inspection standards for the majority of HUD programs. These standards would not be significantly different from those standards to which HUD housing is currently subject. The existing applicable standards are similar but there are some variations from HUD program to program. HUD anticipates that making these standards uniform and consistent for the HUD programs covered by this rule will ease the administrative burden for participants in the covered HUD programs, including and particularly small entities. As with the implementation of any new or modified program requirement, HUD intends to provide guidance to the covered entities, particularly small entities, to assist them in understanding the changes being made.

Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would provide a uniform set of physical condition standards and physical inspection requirements for HUD housing, which would make HUD's requirements clearer and more objective. As a result, the proposed rule is not subject to review under the Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d) (3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)

14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 207*

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 266*

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 881*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 882*

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 883*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 884*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

*24 CFR Part 886*

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 891*

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low-and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 965*

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

*24 CFR Part 983*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is proposed to be amended as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. A new subpart G is added to part 5 to read as follows:

### Subpart G—Physical Condition Standards and Inspection Requirements

Sec.
5.701 Applicability.
5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).
5.705 Uniform physical inspection requirements.

## Subpart G—Physical Condition Standards and Inspection Requirements

### § 5.701 Applicability.

(a) This subpart applies to housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. ''Project-based assistance'' means Section 8 assistance that is attached to the structure (see § 982.1(b)(1) regarding the distinction between ''project-based'' and ''tenant-based'' assistance);

(2) Section 202 Program of Supportive Housing for the Elderly;

(3) Section 811 Program of Supportive Housing for Persons with Disabilities;

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) This subpart also applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(5) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(6) Section 231 of the NHA (Housing for Elderly Persons);

(7) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(8) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(9) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(10) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(11) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

(c) This subpart also applies to Public Housing (housing receiving assistance under sections 5, 9, or 14 of the U.S. Housing Act of 1937).

(d) For purposes of this subpart, the term ''HUD housing'' means the types of housing listed in paragraphs (a), (b), and (c) of this section.

### § 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in § 5.701(a), mortgagors of housing described in § 5.701(b), and PHAs and other entities approved by HUD owning housing described in § 5.701(c) must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair.

These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(b) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(d) *Dwelling units.* (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units may not contain water facilities).

(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(4) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(e) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas would apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and are accessible to all residents, and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) *Compliance with State and local codes.* The physical condition standards in this section do not supersede or preempt State and local codes building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

**§ 5.705 Uniform physical inspection requirements.**

Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually (unless otherwise specifically notified by HUD), in accordance with HUD-prescribed physical inspection procedures. For Public Housing, PHAs have the option to inspect Public Housing units using the procedures prescribed in accordance with this section.

## PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 207 continues to read as follows:

**Authority:** 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

4. A new § 207.260 is added, immediately after § 207.259a, to read as follows:

**§ 207.260 Maintenance and inspection of property.**

As long as the mortgage is insured or held by the Commissioner, the mortgagor must maintain the insured project in accordance with the physical condition requirements in 24 CFR part 5, subpart G; and the mortgagee must inspect the project in accordance with the physical inspection requirements in 24 CFR part 5, subpart G.

## PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

5. The authority citation for 24 CFR part 266 continues to read as follows:

**Authority:** 12 U.S.C. 1707; 42 U.S.C. 3535(d).

**§ 266.505 [Amended]**

6. Section 266.505 is amended by removing and reserving paragraph (b)(6).

7. A new § 266.507 is added, to read as follows:

**§ 266.507 Maintenance requirements.**

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G.

8. In § 266.510, paragraph (a) is revised to read as follows:

**§ 266.510 HFA responsibilities.**

(a) *Inspections.* The HFA must perform inspections in accordance with the physical inspection procedures in 24 CFR part 5, subpart G.

* * * * *

## PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

9. The authority citation for 24 CFR part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

10. Section 880.201 is amended by revising the definition of ''*Decent, safe and sanitary*'', to read as follows:

**§ 880.201 Definitions.**

* * * * *

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

**§ 880.207 [Amended]**

11. Section 880.207 is amended by removing and reserving paragraph (a).

## PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

12. The authority citation for 24 CFR part 881 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

13. Section 881.201 is amended by revising the definition of ''*Decent, safe and sanitary*'', to read as follows:

**§ 881.201 Definitions.**

* * * * *

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

**§ 881.207 [Amended]**

14. Section 881.207 is amended by removing and reserving paragraph (a).

## PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

15. The authority citation for 24 CFR part 882 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

16. Section 882.102 is amended in paragraph (b) by revising the definition of ''*Decent, safe, and sanitary*''; and by removing the definition of ''*Housing quality standards* (HQS)''; to read as follows:

**§ 882.102 Definitions.**

* * * * *

(b) * * *

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition standards in 24 CFR part 5, subpart G.

* * * * *

17. Section 882.404 is amended by revising the heading; by revising paragraph (a); by removing and reserving paragraph (b); by revising paragraph (c); and by removing paragraph (d); to read as follows:

**§ 882.404 Physical condition standards; physical inspection requirements.**

(a) Compliance with physical condition standards. Housing in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

* * * * *

(c) *Compliance with lead-based paint requirements.* Housing used in the Section 8 moderate rehabilitation program must comply with the lead-based paint requirements in 24 CFR 982.401(j). For purposes of the SRO program, however, see § 882.803(b).

18. Section 882.803 is amended by revising paragraph (b), to read as follows:

**§ 882.803 Project eligibility and other requirements.**

* * * * *

(b) *Physical condition standards.* Section 882.404 applies to this program, except that the lead-based paint requirements in 24 CFR 982.401(j) do not apply to this program, since these SRO units will not house children.

* * * * *

## PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

19. The authority citation for 24 CFR part 883 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

20. Section 883.302 is amended by adding a definition of ''*Decent, safe, and sanitary*'', in alphabetical order; and by removing the definition of ''*MPS (Minimum Property Standards*''; to read as follows:

**§ 883.302 Definitions.**

* * * * *

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

**§ 883.310 [Amended]**

21. Section 883.310 is amended by removing and reserving paragraphs (a)(1) and (b)(1).

## PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

22. The authority citation for 24 CFR part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

23. Section 884.102 is amended by revising the definition of ''*Decent, safe, and sanitary*''; and by removing the definition of ''*Minimum property standards*''; to read as follows:

**§ 884.102 Definitions.**

* * * * *

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

**§ 884.110 [Amended]**

24. Section 884.110 is amended in paragraph (b) by removing ''(1) Minimum Property Standards,'' and the designations ''(2)'', ''(3)'', ''(4)'', and ''(5)''.

## PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

25. The authority citation for 24 CFR part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

26. Section 886.102 is amended by revising the definition of ''*Decent, Safe and Sanitary*'', to read as follows:

**§ 886.102 Definitions.**

* * * * *

*Decent, Safe, and Sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

27. Section 886.113 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); and by removing paragraphs (j) through (n); to read as follows:

**§ 886.113 Physical condition standards; physical inspection requirements.**

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

* * * * *

28. Section 886.302 is amended by revising the definition of ''*Decent, safe, and sanitary*'', to read as follows:

**§ 886.302 Definitions.**

* * * * *

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the

physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

29. Section 886.307 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); and by removing paragraphs (j) through (p); to read as follows:

**§ 886.307 Physical condition standards; physical inspection requirements.**

(a) *General.* Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

* * * * *

## PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

30. The authority citation for 24 CFR part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d) and 8013.

31. In subpart A of part 891, a new § 891.180 is added, to read as follows:

**§ 891.180 Physical condition standards; physical inspection requirements.**

Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

## PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

32. The authority citation for 24 CFR part 965 continues to read as follows:

**Authority:** 2 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

33. In part 965, a new subpart F, consisting of § 965.601, is added, to read as follows:

### Subpart F—Physical Condition Standards and Physical Inspection Requirements

**§ 965.601 Physical condition standards; physical inspection requirements.**

Housing owned or leased by a PHA, and public housing owned by another entity approved by HUD, must be maintained in accordance with the physical condition standards in 24 CFR part 5, subpart G. For each PHA, HUD will perform an independent physical inspection of a statistically valid sample of such housing based upon the physical condition standards in 24 CFR part 5, subpart G.

## PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

34. The authority citation for 24 CFR part 983 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

35. Section 983.5 is revised to read as follows:

**§ 983.5 Physical condition standards; physical inspection requirements.**

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Lead-based paint.* 24 CFR 982.401(j) applies to assistance under this part.

Dated: June 5, 1998.

**Andrew Cuomo,**

*Secretary.*

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# Part IV

# Department of Housing and Urban Development

## 24 CFR Parts 5, 200, et al.

## Uniform Financial Reporting Standards for HUD Housing Programs; Proposed Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 200, 236, 266, 880, 886, and 982**

**[Docket No. FR–4321–P–01]**

**RIN 2501–AC49**

## Uniform Financial Reporting Standards for HUD Housing Programs

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish for HUD's Public Housing, Section 8 housing, and multifamily insured housing programs uniform annual financial reporting standards. The rule would require public housing agencies and project owners of HUD-assisted housing to submit electronically to HUD, on an annual basis, certain financial information in a standardized format. Electronic submission is necessary because the manual submission of annual financial information to HUD has become a significant administrative burden to housing authorities, project owners, and mortgagees, as well as to HUD. This rule also would require that the annual financial information to be submitted to HUD must be prepared in accordance with generally accepted accounting principles. HUD is developing the format and the content of the financial information to be reported to HUD annually.

The objective of this rule is to standardize the annual financial information submission process and, through standardization, bring consistency to the evaluation of the financial condition of housing assisted under HUD programs.

**DATES:** *Comment due date:* Comments must be submitted on or before July 30, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information contact the Real Estate Assessment Center, Attention Paul Maxwell, Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–2082 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8399.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*HUD 2020 Management Reforms*

The HUD 2020 Management Reform Plan announced in June 1997, and published in the **Federal Register** on August 12, 1997 (62 FR 43204) presents significant changes to HUD's structure, processes and systems. These changes are directed to improving the efficiency and effectiveness of HUD's programs, operations and the provision of its services. One of the major reforms announced in the HUD 2020 Management Reform Plan is the establishment of a Real Estate Assessment Center (REAC) to be a separate organization within HUD apart from the traditional program functional areas. The REAC is responsible for evaluating the performance of entities managing or owning housing for which HUD has a financial interest or statutory obligation to monitor.

Specifically, REAC is responsible for monitoring the following areas: (1) the physical conditions of HUD properties; (2) the financial conditions of the properties; (3) the management capabilities of the property owners of this housing; and (4) general resident satisfaction. The objective of REAC is to protect HUD's interest (as well as the interest of taxpayers) by identifying and mitigating the risks of financial loss due to: (1) physical deterioration from neglected/inadequate maintenance or modernization; (2) financial insolvency of the owner that impacts the availability of funds to meet HUD program obligations; or (3) intentional fraud, waste and abuse. The resident satisfaction process will allow REAC to hear of conditions directly from tenants and to take or require action when survey results significantly differ from other analysis results.

For REAC to properly evaluate and monitor the financial condition of HUD properties, certain financial information must be provided to HUD on an annual basis. The statutes, regulations, and contracts governing HUD housing programs currently provide for the annual submission of financial information to HUD, as well as such other information that HUD may require to monitor compliance with program statutory, regulatory, and contractual requirements. However, the financial reporting standards vary to some degree from program to program.

As part of HUD's management reform, HUD created working groups familiar with both FHA properties and public housing properties to examine the annual financial information that now is submitted to HUD under its various housing programs. The working groups discussed what financial information needs to be submitted to HUD on an annual basis, and how preparation and submission of this information, and the evaluation by HUD, could be made less burdensome while preserving the enforcement integrity of the information. The conclusion of the working groups was that the annual financial information required of PHAs and project owners should be made uniform to the extent possible across the various HUD housing programs, and that the information should be submitted to HUD in a standardized format. Additionally, there was agreement that the information should be prepared by the entities in accordance with generally accepted accounting principles (GAAP), and the information should be submitted to HUD electronically.

### II. Uniform Financial Reporting Standards

*Highlights of the Rule*

This rule would establish for HUD's public housing, Section 8 housing, other assisted housing, and multifamily insured housing programs annual financial reporting standards. The rule would require public housing agencies and project owners to submit electronically to HUD, on an annual basis, certain financial information, as determined by HUD, and in accordance with a standardized format to be established by HUD. Electronic submission is necessary because the manual submission of HUD financial information has become a significant administrative burden to housing agencies and project owners as well as to HUD. This rule would also require that the annual financial information to be reported to HUD must be prepared in accordance with generally accepted accounting principles (GAAP). ''Generally accepted accounting principles'' has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA). Under GAAP, the accounting principles and financial reporting standards are established by the Governmental

Accounting Standards Board (GASB) for governmental entities, and by the Financial Accounting Standards Board (FASB) for nongovernmental entities.

The specific compliance dates for covered entities to meet the reporting requirements in this rule are discussed in more detail later in this preamble under the heading ''Compliance with New Uniform Financial Reporting Requirements.'' Generally, however, this rule proposes that the annual submission date for the report would be no later than sixty (60) days after the end of the covered entity's fiscal year. Public housing agencies are currently required to report the results of operations based on HUD accounting requirements within 45 days following the close of their fiscal year. Accordingly, this rule amends the time period for public housing agencies by establishing this 60-day time period in part 5, subpart H. HUD is currently developing the content and the format in which the annual financial information is to be submitted. The format will be substantially the same for all covered programs, but the format may vary in certain respects to reflect different types of reporting entities (e.g., owners of multifamily/FHA-related housing vs. PHAs). HUD's objective is to standardize the financial information submission process and through standardization bring consistency to the assessment of the financial condition of the housing.

*Standardized Financial Information*

All HUD housing programs currently require the submission of financial information at least annually to HUD. Much of the financial information that is now submitted to HUD would continue to be submitted to HUD. The content of the annual financial report to be submitted to HUD would not be materially altered by this rule. It is HUD's intention, however, to remove from this report redundant information wherever it is identified. Therefore, with respect to information to be reported, this rule would not represent a significant departure from current reporting practice. The manner in which the financial information is prepared and the format in which it is submitted would be altered by the requirements to comply with GAAP and to submit the report electronically and in a standardized format. A standardized format is anticipated to bring uniformity and consistency to the evaluation of the financial data. Electronic submission is anticipated to bring efficiency to the process and reduce administrative burden.

*Generally Accepted Accounting Principles (GAAP)*

Accounting and reporting in accordance with GAAP, as prescribed by GASB and FASB, would bring much needed consistency to HUD program evaluation. Conversion to GAAP would require the covered HUD program participant to manage its accounting and reporting in accordance with a standard set of rules published by auditing and accounting professionals and recognized both within and outside of government. The use of GAAP, therefore, would enable HUD and program participants to account for transactions and report results of operations using widely accepted protocols. Financial reports based on GAAP are widely accepted by industry and government and are, therefore, widely understood. The relative consistency of GAAP would allow HUD to perform analysis on its large housing portfolio in ways that would assure the overall reliability and validity of the results. As noted earlier in this preamble, HUD has contacted industry leaders and participants in HUD's public housing and insured and subsidized housing programs, and has discussed GAAP and financial reporting, generally, with these parties. From these discussions, HUD has learned that GAAP accounting and reporting is more meaningful than present HUD accounting, and that these entities seek the benefits of the change. By and large the multifamily housing industry already adheres to GAAP tenets.

With respect to public housing, many PHAs are also already adhering to GAAP tenets. At least two States (Louisiana and Tennessee) require that all PHAs in those States convert their HUD basis of accounting financial statements to a GAAP basis for State reporting purposes. Therefore, PHAs, as well as the accountants and auditors in those two States have experience with the GAAP conversion process. Additionally, several large PHAs (New York, Chicago, Denver, Seattle, and Baltimore, for example) have already converted to GAAP. It is expected that many PHAs have quantified the effect of the differences between GAAP and the HUD basis of accounting because of the guidance given in the Public and Indian Housing Low Rent Accounting Guide and because of other business and operating needs (e.g., the liability for sick and vacation leave). Further, many PHAs have expressed to HUD their interest in GAAP reporting for the purpose of ease of understanding by their board members and for acceptance by lenders for private funding and for other non-HUD reporting purposes.

For those PHAs that may not be familiar with GAAP or that have not had occasion to prepare GAAP financial reports for other submissions (for example, reports that may be required to be submitted to State or local governments), accounting support services are an eligible expense under the performance funding system (PFS). To ease the conversion, the current public housing agency accounting guide and chart of accounts will not be modified except to add those additional accounts needed to record new transactions in accordance with GAAP or to enhance the existing chart of accounts to address current business operation requirements. Some illustrative examples of these new accounts are: (1) An allowance for uncollectible receivables and the related bad debt expense; (2) an allowance for depreciation of buildings, structures, and equipment and the related depreciation expense; and (3) liability and expense accounts for probable losses expected from litigation, claims and other contingencies. While a PHA's accounting staff will have to quantify the amounts to be recorded in these new accounts, the PHA's independent public accountants can provide guidance on GAAP. HUD also will offer guidance for purposes of standardizing the conversion results.

*Electronic Submission*

Both HUD and the various entities that participate in HUD programs are making more extensive use of automated systems. Vice President Gore's Report of the National Performance Review has, as a stated objective, the expanded use of new technologies and telecommunications to create an electronic government. (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113–117, Ref. 2). Requiring the electronic submission of financial data in HUD housing programs is another step in implementing the Vice President's objective. The electronic submission of information results in significant benefits, such as increasing the speed of information preparation and exchange, cost savings from reduced need for storage space, improved product because electronic preparation generally results in reduced errors, and faster HUD review and analysis.

The manner of electronic submission of financial reports contemplated by HUD is via the Internet, rather than through tape, diskette, or paper. HUD, however, may approve transmission of

the data by tape or diskette if HUD determines that the cost of electronic Internet transmission would be excessive. In this day and age of increased automation in communications and business transactions, including the reporting of information, HUD anticipates that the instances in which covered entities will not be able to comply with submission of financial data electronically via Internet will be very few. Implementation of this electronic standardized financial reporting system would help to bring HUD up to speed with its program partners in terms of modern technology.

*Financial Report Submission Date*

The rule provides that the annual submission date for the report will be sixty (60) days after the end of the covered entity's fiscal year. The 60-day requirement appears in existing regulations, regulatory agreements, and/or subsidy contracts for most of the housing covered by this rule (see, e.g., the Section 8 project-based assistance programs). Since HUD has determined that the 60-day requirement has provided a reasonable amount of time to compile and submit the required information, and since a majority of the covered entities are familiar with this time period, HUD has determined that there is no compelling reason to change the 60-day requirement. Since under existing practice, public housing agencies generally report the results of operations to HUD within 45 days following the end of their fiscal years, this rule would allow PHAs 15 extra days during which to submit their financial reports. The dates on which HUD intends to make these reporting requirements effective and mandatory are discussed later in this preamble, under the heading ''Compliance with New Uniform Financial Reporting Requirements.''

*HUD Programs Covered*

The uniform financial reporting standards would apply to owners and/or administrators of housing under the following HUD programs:

1. Public Housing

The reporting requirements would apply to PHAs receiving assistance under sections 5, 9, or 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437g, and 1437*l*) (the 1937 Act).

2. PHAs Administering Section 8 Housing Assistance Payments Programs

The reporting requirements would apply to PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program.

3. Owners of Housing Receiving Section 8 Project-Based Housing Assistance

The reporting requirements would apply to owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program.

4. Multifamily Housing

The reporting requirements would apply to owners of housing receiving assistance or loans under the following HUD programs:

—Section 202 Program of Supportive Housing for the Elderly;
—Section 811 Program of Supportive Housing for Persons with Disabilities; and
—Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

The reporting requirements would also apply to owners of all housing with mortgages insured, coinsured, or held by HUD, or housing that is receiving assistance from HUD. Such housing would include, but may not be limited to, housing under the following authorities:

—Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);
—Section 213 of the NHA (Cooperative Housing Insurance);
—Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);
—Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 231 of the NHA (Housing for Elderly Persons);
—Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);
—Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);
—Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);
—Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and
—Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

Section 5.801(a)(4) of this proposed rule lists those sections of the National Housing Act that specifically give the Secretary authority to insure mortgages. Sections of the NHA that give the Secretary authority to insure mortgages ''pursuant to'' another section of the NHA are not listed in the coverage of § 5.801 of this proposed rule, because HUD ultimately has insured the mortgages under one of the listed statutory sections (e.g., a coinsured mortgage may be insured under section 207 of the NHA, pursuant to section 244 of the NHA).

*Compliance With New Uniform Financial Reporting Requirements*

For PHAs, as recipients of assistance under sections 5, 9, or 14, or as contract administrators of the various Section 8 assisted housing programs listed in section 2, above, HUD intends that the requirement of electronic submission of GAAP-based financial reports, in the manner and in the format prescribed by HUD, will begin with those PHAs with fiscal years ending September 30, 1999 and later. This compliance schedule will allow sufficient conversion time for PHAs that are not currently using GAAP. Unaudited financial statements will be required 60 days after the PHA's fiscal year end (i.e., November 30, 1999), and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133. A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its

report electronically and prepared in accordance with GAAP, in the manner and in the format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with the financial reporting requirements of this rule, but would not be required to do so.

For all other entities to which this rule would apply (''other covered entities''), HUD intends that the requirement of electronic submission of GAAP-based audited financial reports, as provided in this rule, will begin with those other covered entities with fiscal years ending December 31, 1998 and later. The earlier starting date reflects the widespread use of GAAP by other covered entities. Beginning on January 1, 1999 and thereafter, all financial reports submitted to HUD by other covered entities would be required to be submitted in accordance with the requirements of this rule. Other covered entities with fiscal years ending December 31, 1998 are required to submit electronic, GAAP-based, audited financial reports by no later than March 1, 1999 (60 days after the close of the fiscal year). Covered entities with fiscal years ending December 31, 1998 that elect to submit their audited reports earlier than the due date of March 1, 1999 must submit their audited financial reports electronically and prepared in accordance with GAAP, in the manner and format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to January 1, 1999, other covered entities may submit their financial reports in accordance with this rule, but they would not be required to do so.

The reporting requirements in this rule are not intended to alter the applicability or timing of the audit requirements in the Single Audit Act (as discussed below). HUD intends to issue notices and other guidance on the details relating to the implementation of this rule.

Additionally, to allow for a period of consistent assessment of the financial reports submitted to HUD under this rule for the purpose of making any refinements or necessary adjustments, PHAs covered by this rule will not be allowed to change their fiscal years for their first three full fiscal years following the effective date of this rule.

## III. Cross-Cutting Financial Reporting and Recordkeeping Requirements

While the statutory authorities for the individual HUD housing programs (e.g., the U.S. Housing Act of 1937 or the National Housing Act) provide for the submission of financial information to HUD, in such form and at such times as prescribed by HUD, there are also certain statutory financial reporting and recordkeeping requirements that cut across several HUD programs. This rule would not supersede the requirements. These cross-cutting requirements are as follows:

### *The Byrd Amendment*

Section 814 of the Housing Act of 1954 (42 U.S.C. 1434) (the Byrd Amendment) provides that every contract between HUD and any person or local body for a loan, advance, grant or contribution must provide that the person or local body must keep such records as HUD prescribes. The records must permit a speedy and effective audit and fully disclose the amount and disposition of the proceeds by the person or local body. The Byrd Amendment also provides that no mortgage covering new or rehabilitated multifamily housing shall be insured unless the mortgagor certifies that the mortgagor will keep the records as are prescribed by HUD in such form as to permit a speedy and effective audit. Finally, the Byrd Amendment provides that HUD and the Comptroller General of the United States shall have access to and the right to examine and audit the records.

### *The Single Audit Act*

The Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) (the Act), as amended by the Single Audit Act Amendments of 1996 (Pub. L. 104–156; approved July 5, 1996) (Single Audit Act of 1996), sets audit requirements for State and local governments and nonprofit organizations that receive Federal awards, including loan guarantees. The Single Audit Act of 1996 raised the monetary threshold for expenditures—from $25,000 to $300,000—over which it requires an entity to have an audit. The Act now provides that each entity that expends $300,000 or more shall have either a single audit or a program-specific audit annually. The Single Audit Act of 1996 also shortened the financial report submission date from 13 months to 9 months, and it included a report submission process that includes a data collection form and streamlined filing requirements.

OMB Circular A–128 implemented the Act for State and local governments, and a separate OMB Circular A–133 implemented audit requirements for nonprofits. Similarly, the regulations in 24 CFR part 44 implemented OMB Circular A–128 audit requirements for State and local governments, and the regulations in 24 CFR part 45 set forth the audit requirements for nonprofits under OMB Circular A–133. The program regulations for many of the housing programs addressed in this rule refer to the audit requirements in parts 44 and/or 45 (e.g., 24 CFR 200.11, 236.901, 266.510, 880.211, 886.131, 891.160).

On June 30, 1997 (62 FR 35278), OMB published in the **Federal Register** the final revisions to OMB Circular A–133. The revisions were undertaken to reflect the changes made to the Act by the Single Audit Act of 1996. Revised OMB Circular A–133 consolidated the requirements for States and local governments with the requirements for nonprofits, and therefore rescinded OMB Circular A–128. By interim rule published on November 18, 1997 (62 FR 61616), HUD adopted the requirements of revised OMB Circular A–133. Through the November 18, 1997 interim rule, HUD removed and reserved 24 CFR parts 44 and 45, since these parts are no longer applicable (upon issuance of revised OMB Circular A–133). HUD is currently developing a rule that will correct all references in HUD's regulations to those obsolete regulations. The financial reporting submission requirements in this proposed rule would be consistent with the provisions of the Act and OMB Circular A–133.

## IV. Objective of the Rule

The purpose of this rule is to bring uniformity and consistency to the financial reporting component of HUD housing programs, which otherwise varies from program to program, in most cases solely on the basis that the program is not administered by the same HUD office. This rule will improve the efficiency of the financial reporting process, and reduce the administrative burden for covered entities and for HUD.

## V. Regulatory Amendments

### *New Subpart for Uniform Financial Reporting Standards*

This rule creates a new subpart H in 24 CFR part 5. The regulations in part 5 represent HUD's general program requirements, as well as requirements that cut across one or more HUD programs. This new subpart H consists of one section. Section 5.801(a) describes the entities to which the uniform financial reporting standards will apply. Paragraph (b) of § 5.801 provides that entities covered by subpart H must submit electronically to HUD certain annual financial

information, prepared in accordance with generally accepted accounting principles, and in the format prescribed by HUD. In accordance with paragraph (c) of § 5.801, the information must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting entity.

*Conforming Amendments in Program Regulations*

In accordance with the uniform financial reporting standards, this rule also makes several conforming amendments to HUD's program regulations to reference compliance with the uniform financial reporting standards in 24 CFR part 5, subpart H. HUD is developing a separate proposal regarding the overall assessment of public housing, in which HUD will further address the applicability of the uniform financial reporting standards in 24 CFR part 5, subpart H, to the public housing programs.

One of the conforming amendments proposed in this rule would be to add a new § 200.36, which would refer to the uniform financial reporting requirements in subpart H of part 5. Section 200.36 would apply the new financial reporting requirements to all HUD's multifamily mortgage insurance programs, since many of the various program regulations (e.g., 24 CFR parts 207, 213, 220, 221, 231, 232, 234, 241) refer to the cross-cutting requirements in part 200. This rule proposes to amend the heading for subpart A of part 200 to clarify that the financial reporting requirement would be a continuing eligibility requirement.

HUD may make additional conforming amendments at the final rule stage of this rule to remove any outdated or inconsistent regulatory provisions.

## VI. Justification for Shortened Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the announcement, through this rule, of HUD's proposal to require standardized financial information, to be prepared in accordance with GAAP and electronically submitted, has been developed with the participation of HUD's program participants, industry leaders and experts in the financial and accounting industries. As also discussed in the preamble, the change to GAAP and the requirement of the submission of annual financial reports in electronic and standardized format will not be a significant change for many HUD program participants. In HUD's multifamily programs, the multifamily program participants already largely adhere to GAAP tenets. In HUD's public housing programs, several public housing agencies already adhere to GAAP tenets. These PHAs can serve as resources to other PHAs for assistance in the conversion process.

GAAP requires that financial statements prepared on another comprehensive basis of accounting (the basis prescribed by HUD accounting, for example) include in the accompanying notes, a summary of significant accounting policies that would include the basis of presentation and describe how that basis differs from generally accepted accounting principles. PHAs, therefore, under current non-GAAP reporting are already aware, or should be aware, of the differences between the basis of accounting prescribed by HUD and that prescribed by GAAP. Additionally, the timetable for this rule recognizes the time allowed by the Single Audit Act for the preparation and submission of the final audited statements. This period of time allows HUD to work with PHAs and private owners not currently using GAAP to assist them in the conversion process.

The changes to the financial reporting requirements, proposed by this rule, will bring consistency to the evaluation of the financial condition of housing assisted under various HUD programs, which benefits the entities covered by this rule. The standardization of and electronic submission of the annual financial information due to HUD will not only bring consistency for all program participants, it will reduce the administrative burden on program participants. Electronic submission of financial information results in cost savings from reduced need for storage space, improved product because electronic preparation generally results in reduced errors as well as other benefits such as increased speed in the preparation and exchange of information preparation and exchange, and faster HUD review and analysis.

Given these reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of publication in the **Federal Register**. HUD will also directly notify entities that have expressed a significant interest to HUD by sending such entities a copy of this proposed rule.

## VII. Findings and Certifications

*Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

In accordance with 5 CFR 1320.5(a)(1)(iv), HUD estimates the total reporting and recordkeeping burden that will result from the proposed collection of information as follows:

REPORTING BURDEN

| | Number of respondents | Frequency of response | Estimated time (hours) | Average response (hours) |
|---|---|---|---|---|
| PHAs | 3,300 | 1 | .75 | 2,475 |
| Multifamily Housing Owners | 30,000 | 1 | .75 | 22,500 |
| Total Reporting Burden | | | | 24,975 |

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4321) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

and

Paul Maxwell, Reports Liaison Officer, Department of Housing & Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410.

*Executive Order 12866*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Environmental Impact*

This proposed rule involves external administrative requirements and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6) and (where this rule would amend existing provisions) 50.19(c)(2), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. The financial reporting requirements proposed to be established by this rule are anticipated to reduce administrative burden for all entities covered by this rule, including small entities. As noted in the preamble, this rule does not propose a new reporting requirement. The annual reporting of certain financial information is already a HUD program requirement. What this rule proposes is to standardize, to the extent possible, the content of the information and the preparation of the information (in accordance with GAAP), and to provide for electronic submission. These proposed changes to financial reporting to HUD are anticipated to bring consistency, simplicity, and reduced administrative burden to the reporting process. For those entities unfamiliar with GAAP, and particularly for any small entities that may be unfamiliar with GAAP, HUD intends to conduct training seminars in order to assist small entities in their conversion to GAAP. With respect to costs, the audit costs assumed by PHAs and multifamily project owners are a recognized part of operating and administrative expenses, and accordingly, it is anticipated that there will be no (or very little) monetary costs incurred. As noted in the preamble, the Federal Housing Commissioner has required GAAP-based accounting for a number of years, and the vast majority of owners already adhere to its tenets. Therefore, any burden involved in conversion to GAAP in FHA programs is anticipated to be minimal. Further, in developing its electronic filing requirements, FHA has involved all stakeholders in the development effort, including owners and agent organizations and the accounting profession.

In addition to the issues of training and costs, entities will have up to 9 months to prepare statements in accordance with GAAP (the period of time allowed under the Single Audit Act). Notwithstanding HUD's determination that this rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this rule is not subject to review under the Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMBRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)

14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)

14.134—Mortgage Insurance—Rental Housing (Section 207)

14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d)(3) and (4))

14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)

14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)

14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair Housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies) Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 236*

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 266*

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 886*

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 982*

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. A new subpart H, consisting of § 5.801, is added to part 5 to read as follows:

## Subpart H—Uniform Financial Reporting Standards

### § 5.801 Uniform financial reporting standards.

(a) *Applicability.* This subpart H implements uniform financial reporting standards for:

(1) Public housing agencies (PHAs) receiving assistance under sections 5, 9, or 14 of the 1937 Act (42 U.S.C. 1437c, 1437g, and 1437*l*) (Public Housing);

(2) PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program;

(3) Owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program;

(4) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under the following HUD programs:

(i) Section 202 Program of Supportive Housing for the Elderly;

(ii) Section 811 Program of Supportive Housing for Persons with Disabilities;

(iii) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects);

(iv) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(v) Section 213 of the NHA (Cooperative Housing Insurance);

(vi) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(vii) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(viii) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(ix) Section 231 of the NHA (Housing for Elderly Persons);

(x) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(xi) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(xii) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xiii) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(xiv) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk-Sharing Program).

(b) *Submission of financial information.* Entities (or individuals) to which this subpart is applicable must provide to HUD, on an annual basis, such financial information as required by HUD. This financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance;

(2) Submitted electronically in the electronic format designated by HUD; and

(3) Submitted in such form and substance as prescribed by HUD.

(c) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(d) *Reporting compliance dates.* Entities (or individuals) that are subject to the reporting requirements in this section must commence compliance with these requirements as follows:

(1) For PHAs listed in paragraphs (a)(1) and (a)(2) of this section, the requirements of this section will begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

(2) For entities listed in paragraphs (a)(3) and (4) of this section, the requirements of this section will begin with those entities with fiscal years ending December 31, 1998 and later. Entities listed in paragraphs (a)(3) and (a)(4) of this section with fiscal years ending December 31, 1998 that elect to submit their reports earlier than the due date must submit their financial reports as required in this section. On or after September 30, 1998 but prior to January 1, 1999, these entities may submit their financial reports in accordance with this section.

(e) *Limitation on changing fiscal years.* To allow for a period of consistent assessment of the financial reports submitted to HUD under this subpart part, PHAs listed in paragraphs (a)(1) and (a)(2) of this section will not be allowed to change their fiscal years for their first three full fiscal years following [the effective date of the final rule to be inserted at the final rule stage].

## PART 200—INTRODUCTION TO FHA PROGRAMS

3. The authority citation for 24 CFR part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

4. The heading of Subpart A is revised to read as follows:

### Subpart A—Requirements for Application, Commitment, and Endorsement Generally Applicable to Multifamily and Health Care Facility Mortgage Insurance Programs; and Continuing Eligibility Requirements for Existing Projects

5. A new § 200.36 is added immediately after § 200.35 to read as follows:

**§ 200.36 Financial reporting requirements.**

The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

## PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

6. The authority citation for 24 CFR part 236 continues to read as follows:

**Authority:** 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

7. Section 236.1 is amended by revising the heading, by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

**§ 236.1 Applicability, cross-reference, and savings clause.**

* * * * *

(b) The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

## PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

8. The authority citation for 24 CFR part 266 continues to read as follows:

**Authority:** 12 U.S.C. 1707; 42 U.S.C. 3535(d).

9. In § 266.505, paragraph (b)(7) is revised to read as follows:

**§ 266.505 Regulatory agreement requirements.**

* * * * *

(b) * * *

(7) Maintain complete books and records established solely for the project and comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

## PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

10. The authority citation for 24 CFR part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

11. In § 880.601, paragraph (d)(1) is revised to read as follows:

**§ 880.601 Responsibilities of owner.**

* * * * *

(d) * * *

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

* * * * *

## PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

12. The authority citation for 24 CFR part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

13. In § 886.318, paragraph (d)(1) is revised to read as follows:

**§ 886.318 Responsibilities of the owner.**

* * * * *

(d) * * *

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

* * * * *

## PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

14. The authority citation for 24 CFR part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

15. In § 982.158, paragraph (a) is amended by adding a sentence at the end, to read as follows:

**§ 982.158 Program accounts and records.**

(a) * * * The HA must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

Dated: June 5, 1998.

**Andrew Cuomo,**

*Secretary.*

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# Part V

# Department of Housing and Urban Development

**24 CFR Part 901**

**Public Housing Assessment System; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR PART 901**

**[Docket No. FR–4313–P–01]**

**RIN 2577–AB81**

## Public Housing Assessment System

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule establishes an entirely new system for the assessment of public housing in the United States. The nation's public housing system houses 1.2 million families in 20,000 projects across the 50 States, Puerto Rico, Guam and the U.S. Virgin Islands, operated by 3,400 public housing agencies. The major components of the new system include:

The rule provides for the first-ever assessment of the physical condition, financial health, and resident services in public housing. For the first time, the physical condition of every project in the nation's public housing inventory will be inspected on a regular basis with uniform standards to ensure that residents receive decent, safe, and sanitary housing. For the first time, the financial condition of every public housing agency will be assessed on generally accepted accounting principles. For the first time, resident satisfaction with public housing services will be measured and counted in HUD's assessment of public housing agency management.

The rule provides for increased flexibility for top performers. Public housing agencies which score in the top ten percent in their physical condition, financial health, resident satisfaction, and management operations will receive substantial flexibility and bonus points for funding competitions.

The rule provides for the establishment of a Troubled Agency Recovery Center to improve poor performers. Public housing agencies which perform unsuccessfully on these factors will be referred to a new Troubled Agency Recovery Center to improve poor performers.

The rule provides for the establishment of an Enforcement Center and Receivership for agencies which fail to improve performance. Public housing agencies which fail to post significant improvement within a year will be automatically referred to the new HUD Enforcement Center which will institute proceedings for judicial receivership to remove failed agency management.

The purpose of the new Public Housing Assessment System is to enhance public trust by creating a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable, and provides real rewards for high performers and consequences for poor performers. As more fully discussed in the Supplementary Information section of the preamble, the proposed rule was developed with the assistance of public housing agency officials, representatives of public housing agency organizations, and representatives of public housing residents organizations.

**DATES:** *Comment due date:* July 30, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information contact the Real Estate Assessment Center, Attention William Thorson, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–0102 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. HUD Constituents Participation in the Proposed Rule

President Clinton's Executive Order on Regulatory Planning and Review (E.O. 12866, issued September 30, 1993) provides in section (6)(a) that:

> Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local and tribal officials).

Consistent with President Clinton's Executive and HUD's own partnership initiatives with its constituents and clients, the new assessment system for public housing was developed with extensive discussion and consultation with public housing agency (PHA) officials, officials from PHA representative organizations, representatives of public housing resident groups, experts in the fields of finance and audit and physical inspection of properties, and other interested parties such as housing advocacy groups and local government representatives. These discussions and consultations began in October 1997 and continued through April 1998. It was important to HUD that these entities and individuals have input in the development of a proposal for a new assessment system for public housing.

The consultation and discussions with PHA agency officials and representative groups will continue through the final rulemaking process and in the implementation of this new system. During the transition period to the new system, HUD will work closely with PHAs and resident groups to make any necessary refinements to the system. HUD, PHAs and public housing residents all want to see an effective and efficient management system for public housing, and will work together to make this a successful system for all concerned.

### II. HUD 2020 Management Reforms

On June 26, 1997, HUD released its plan, the ''HUD 2020 Management Reform Plan,'' for significant management reforms at HUD. HUD published the plan in the **Federal Register** on August 12, 1997 (62 FR 43204). The HUD 2020 Management Reform Plan is directed to (1) empowering people and communities to improve themselves, and (2) restoring HUD's reputation and credibility by improving the efficiency and effectiveness of HUD's programs, operations, and delivery of services. To improve the efficiency and effectiveness of HUD's programs, operations, and delivery of services, the HUD 2020 Management Reform Plan calls for the restructuring of HUD's internal operations to reallocate resources and consolidate major functions.

Under the HUD 2020 Management Reform Plan, resources will be allocated in a way that is designed to align HUD's resources with its long-term mission of empowering people and communities to improve themselves and succeed in today's world. Consolidation of functions is designed to avoid duplication of effort, achieve

consistency and uniformity in the performance of these functions, and ensure fairness. With respect specifically to HUD's public housing programs, the consolidation of certain functions is critical to the survival of public housing as an affordable housing option for low-income persons. Those consolidated functions that will significantly impact and benefit public housing operations include the establishment of a Real Estate Assessment Center, a Troubled Agency Recovery Center (TARC) and an Enforcement Center. These centers provide the backbone of HUD's new system for Federal management of the nation's public housing. The following provides a brief overview of the functions of the three centers and their relationship to public housing, as well as to other HUD assisted properties.

*A. Measuring Program Performance—the Real Estate Assessment Center*

The Real Estate Assessment Center (the ''Assessment Center'' or ''REAC'') is charged with the responsibility for assessing and scoring the condition of properties in which HUD has an interest and the performance of entities that manage and own those properties. Until the establishment of the Assessment Center, HUD's Office of Housing and the Office of Public and Indian Housing independently operated separate real estate assessment operations, yet the administration of both organization's multifamily portfolios is a common function of asset management. Under the Assessment Center, the assessment of all of the properties of the Office of Housing and the Office of Public and Indian Housing is consolidated and the evaluation standards and procedures are made uniform, to the greatest extent feasible.

The establishment of the Assessment Center marks an important change in HUD's way of doing business. Until the establishment of the Assessment Center, HUD has never had an effective and comprehensive property assessment system. Under HUD 2020 Management Reform, for the first time in HUD's history, all properties will be physically inspected and financially assessed using a comprehensive and uniform protocol. The Assessment Center will play a key role in evaluating and scoring the condition of public housing properties and the performance of PHAs, and it also will play a key role in evaluating and scoring the condition of other HUD-assisted housing and FHA-insured properties, and the performance of the entities that manage and own those properties. The Assessment Center will be staffed with individuals who are experts in the areas of finance and audit, real estate functions, and housing management operations.

In order for the Assessment Center to effectively perform its functions, certain assessment tools—specifically, physical condition standards for HUD properties, and financial information from HUD reporting entities—need to be made uniform to the greatest extent possible. As discussed later in this preamble, establishment of uniform protocols for assessing physical condition and financial information is underway. These new standardized protocols will become significant diagnostic tools for the Assessment Center. For public housing, as will be discussed in more detail later, these uniform protocols will form part of the basis by which the Assessment Center will analyze the performance of public housing agencies (PHAs) and assign a score. The score assigned to a PHA will identify that PHA as a high performer, standard performer or troubled PHA. High performers will receive increased regulatory flexibility, bonus points and other incentives. Those PHAs designated as troubled will be referred to the Troubled Agency Recovery Center to improve performance.

The uniform protocols to be used by the Assessment Center, although standardized, will not be static. The Assessment Center will provide an ongoing analysis and evaluation of assessment methods to determine the accuracy, the effectiveness and the relevance of inspection, management and financial protocols, including factors, scoring, weights, sampling and algorithms. The Assessment Center will keep the public and HUD program participants advised of the findings obtained through this ongoing analysis and of any recommended changes to the protocols and indicators through issuance of **Federal Register** notice or other appropriate notice.

One of HUD's objectives under HUD 2020 Management Reform is not only to identify where performance by program participants fails to meet acceptable standards, but to assist these participants in raising their level of performance. For PHAs, such assistance will be provided either by the appropriate HUD area HUB/Program Center, or by the TARC if the PHA is designated as troubled.

*B. Assisting Troubled Public Housing Agency Performers—Troubled Agency Recovery Centers (TARCs)*

The Troubled Agency Recovery Centers established by HUD will assist PHAs designated as troubled to reach improved performance through the development and implementation of sustainable solutions. Upon designation as troubled, a PHA will be referred to the TARC for assistance. The TARC will work with the PHA to develop and implement an intervention strategy to help raise the PHA's level of performance. The TARC will provide technical assistance to troubled PHAs on a variety of public housing operation issues, including: property needs and maintenance; occupancy procedures; resident and applicant relations; and financial management. One of the principal objectives of the TARC is to determine the appropriate course of action for the troubled PHA to achieve recovery, considering the resources and the recovery period best suited for the individual PHA, its community and the families the PHA serves. If a troubled PHA is found to be making substantial progress toward addressing its problems, consideration may be given to allowing the PHA additional time to continue the recovery effort. If a troubled PHA's problems are not addressed within the period established by this rule, the PHA will be referred to the Enforcement Center.

*C. Restoring Public Trust—the Enforcement Center*

The greatest breach of the public trust at HUD is the waste, fraud and abuse in HUD's existing portfolio of millions of housing units. Until recently, each of HUD's program offices (the Offices of Public and Indian Housing, Housing, and Community Planning and Development) operated independent enforcement functions, with different standards and procedures. HUD has combined non-civil rights enforcement actions for the program offices into one authority—the Enforcement Center. The Enforcement Center is a fundamental programmatic reform that HUD will take to restore public trust in fulfilling its mission to provide decent, safe and sanitary housing for lower and moderate income households. The Enforcement Center is intended to be the central Departmental focus for taking aggressive action against owners of HUD's troubled assisted housing and public housing portfolios. The Enforcement Center will be responsible for correcting long-standing noncompliance issues with HUD grantees, and will take action against owners who do not cooperate with HUD during any recovery process or who may have put housing projects in jeopardy by engaging in waste, fraud or abuse.

With respect to public housing, the Enforcement Center will be responsible for troubled PHAs that fail to improve their performance during the

established time period. The actions taken by the Enforcement Center against such PHAs include judicial receivership to remove failed management, and referrals for the imposition of civil and criminal sanctions to the applicable Federal government agencies or offices, where appropriate.

*D. Achieving Fairness By Transferring Responsibility to Independent Units*

Each of the three centers, the Assessment Center, the TARC, and the Enforcement Center, will be separate units, independent from traditional HUD program areas and functions. This separation from traditional program areas reflects a key objective of HUD 2020 Management Reform and that is to treat program participants and assess program performance on the basis of uniform standards, not on the basis of which HUD program office administers the assistance. Before the HUD 2020 Management Reforms, program office staff all too often were handed conflicting mandates. On the one hand, staff were asked to provide assistance to HUD program participants (communities, housing agencies, multifamily owners, etc.) to help them meet their housing and urban development needs; and on the other hand, these employees were directed to monitor the actions of the program participants. HUD realizes that both roles are important to HUD's mission and have a place in HUD, but the role of facilitator and the role of monitor are inherently in conflict. The creation of the Assessment Center, the TARC and the Enforcement Center as independent units is designed to address the inconsistent responsibilities previously handled by program staff. Dividing the important functions of community facilitator and program monitor into different offices is a critical step in restoring public trust in HUD.

Restoring public trust not only will be achieved through independence of the Assessment Center, TARC and the Enforcement Center, but in the consistent uniform approach the centers take to the performance of their respective functions. As discussed earlier, for the Assessment Center, a consistent and fair approach to the evaluation of HUD properties requires uniform assessment standards in two critical areas: (1) The physical condition of properties receiving HUD financial assistance; and (2) the financial condition of the owners and managers of these properties.

*E. Standardization of Physical Assessment of Properties—Uniform Physical Condition Standards*

As part of the HUD 2020 Management Reform objective to create a uniform, assessment process for all HUD assisted properties, HUD is establishing uniform physical conditions standards and inspection procedures for its assisted housing, FHA related properties and public housing. These standards are intended to ensure that such housing is decent, safe, sanitary and in good repair—the physical condition standard to which HUD assisted housing always has been subject. HUD's Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing currently must undergo an annual physical inspection to determine that the housing qualifies as decent, safe, sanitary and in good repair. The description or components of what constitutes acceptable physical housing quality and the physical inspection procedures by which the standards are determined to be met, however, vary from HUD program to HUD program. To the extent possible, HUD believes that housing assisted under its programs should be subject to uniform physical standards, regardless of the source of the subsidy or assistance. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs. Therefore, for the physical condition indicator of the Public Housing Assessment System (PHAS), this proposed rule provides for public housing properties to be evaluated on the basis of uniform physical condition standards that ensure that the public housing is decent, safe, and sanitary. Through separate rulemaking, HUD will propose to apply these uniform physical condition standards to properties assisted under other HUD housing programs. These standards are discussed in greater detail later in this preamble.

*F. Standardization of the Financial Assessment of Program Participants—Uniform Financial Reporting*

The uniform assessment of HUD properties under HUD 2020 Management Reform also includes a uniform financial assessment process. To achieve this objective, HUD is establishing uniform standards for annual financial reporting for HUD's public housing, Section 8 housing, and multifamily insured housing programs, and will require public housing agencies, project owners, and managers (if applicable) of HUD-assisted housing to submit to HUD annually in an electronic mode and standardized format, to be established by HUD, certain financial information, prepared in accordance with generally accepted accounting principles (GAAP), as prescribed by the Governmental Accounting Standards Board (GASB). Electronic submission is necessary because the manual submission of annual financial information has become a significant administrative burden to PHAs, project owners, and mortgagees, as well as to HUD. HUD is developing a standardized format for the reporting of the annual financial information, which will be ready for dissemination in sufficient time to allow PHAs to comply with the provisions of this rule. This format will be substantially the same for all covered programs, but the format may vary in certain respects to reflect different types of reporting entities (e.g., owners of multifamily/Federal Housing Administration (FHA)-related entities vs. PHAs). The objective of the uniform financial reporting requirements is to standardize the annual financial information submission process and, through standardization, bring consistency to the evaluation of the financial condition of housing assisted under HUD programs. Therefore, for the financial condition indicator of the PHAS, this proposed rule provides for PHAs to submit electronically to HUD annual financial reports prepared in accordance with GASB GAAP. Through separate rulemaking, HUD will propose to apply these uniform financial reporting requirements to program participants in other HUD housing programs. The financial reporting requirements are discussed in greater detail later in this preamble.

*G. Enhancing Public Trust Through Improved Assessment of Public Housing and PHAs*

The new Public Housing Assessment (PHAS), proposed by this rule, is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS represents a major rethinking of public housing management. The parties most involved in, and affected by, public housing—PHAs and public housing residents—have expressed concerns that the existing system largely ignores the physical conditions of public housing.[1]

[1] The current Public Housing Management Assessment Program (PHMAP), for which the regulations are codified at 24 CFR part 901, was established in accordance with section 502 of the

Under the current system, a PHA's management performance may be assessed as acceptable when its residents are living in unacceptable housing conditions. Other concerns are that the current system is almost totally dependent on PHA self-certification, rather than on objective evidence or third-party verification; does not focus on basic real estate functions; and does not provide for opportunity for input from those directly served by the PHA—the public housing residents. The new PHAS responds to these concerns by adding indicators that provide for independent assessment and specifically assess these components of a PHA's operation—physical condition of the property; financial condition; and resident feedback.

Under the PHAS, HUD will evaluate a PHA based on the following indicators: (1) the physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) residents' assessment (through a resident survey) of the PHA's performance. The management indicator of this new assessment system will incorporate the majority of the existing statutory management assessment indicators (the remaining statutory indicators will be part of the other PHAS indicators). Each of these major indicators is comprised of components. The PHAS indicators are discussed in further detail below. The PHAS, although applicable only to public housing, reflects HUD's approach under HUD 2020 Management Reform to all properties assisted by HUD. HUD will assess all HUD-related properties in a manner similar to that outlined in this proposed rule, utilizing uniform financial and physical indicators, and resident feedback.

## III. The Public Housing Assessment System (PHAS)

### *A. Overview of the PHAS*

The new PHAS is designed to instill trust in public housing as a cost effective and affordable housing option by demonstrating that there is in place an assessment system that accurately determines whether a PHA is doing an outstanding, acceptable, or unacceptable job in providing decent, safe and sanitary housing to its residents. An accurate assessment of a PHA's performance is critical because the consequences of that assessment can be significant. For PHAs determined to be performing well, the consequences will be less scrutiny and additional flexibility. For PHAs determined not to be performing well, the consequences will be intensive technical assistance, deadlines for improvement and possible punitive actions for failure to improve during established periods.

The approach provided by the PHAS maximizes the best use of public funds by concentrating resources on those PHAs in most need of attention and recognizing outstanding performers. The system is fundamentally designed to provide relevant and verifiable measures that directly relate to PHA performance. Additionally, the system is designed to allow HUD to act upon the findings produced from four comprehensive indicators.

Under the PHAS, the Assessment Center assumes responsibility from the Office of Public and Indian Housing for assessing the performance of PHAs. The Assessment Center will examine four essential areas of housing operations to determine a PHA's performance in delivering HUD programs and services. These indicators are: (1) the physical condition of public housing (addressed in subpart B of the rule); (2) the financial condition of a PHA (addressed in subpart C of the rule); (3) the management operations capabilities of PHAs, which will incorporate the majority of the existing statutory assessment requirements (addressed in subpart D of the rule); and resident service and satisfaction (addressed in subpart E of the rule). To assess the performance of a PHA on the basis of the first two indicators, the Assessment Center will utilize comprehensive and standardized protocols to conduct physical inspections of public housing properties, as described above, and to assess the financial condition of PHAs. For the Management Operations Indicator and the Resident Service and Satisfaction Indicator, the Assessment Center will gather and analyze data and information provided by the PHA.

In order to determine a composite score for each PHA, the four indicators of the PHAS will be individually scored and then combined to present a composite score that reflects the overall performance of PHAs for a total of 100 possible points. The 100 points are distributed as follows:

30 total points for the physical condition;

30 total points for the financial condition;

30 total points for management operations; and

10 total points for resident service and satisfaction.

The following discussion presents a brief overview of each of the four indicators to be used under the PHAS.

#### 1. PHAS Indicator #1—Physical Condition of Public Housing Properties

Subpart B of part 901 of this proposed rule addresses the Physical Condition Indicator. This indicator provides for the assessment of the physical condition of a PHA's public housing. A PHA must maintain its housing in decent, safe, and sanitary condition.

*Statutory Standard of Decent, Safe and Sanitary.* This well established and longstanding physical condition standard has several statutory sources, including section 3(b)(1) of the 1937 Act, which provides in relevant part as follows:

> The term ''low-income housing'' means decent, safe, and sanitary dwellings assisted under this Act. The term ''public housing'' means low-income housing, and all necessary appurtenances thereto, assisted under this Act other than under section 8.

Section 14 of the 1937 Act, which addresses public housing modernization, also emphasizes a decent, safe, and sanitary housing standard. Section 14(j)(2) provides, in relevant part, that ''the Secretary shall issue rules and regulations establishing standards which provide for decent, safe, and sanitary living conditions in low-rent public housing projects. * * *'' [2] In adopting uniform physical condition standards for public housing, this proposed rule would not alter the statutory standard for maintaining public housing. Instead, the proposed rule, by using the statutory terminology, clearly acknowledges that public housing must be maintained in ''decent, safe, and sanitary'' condition.[3]

*No Preemption of State and Local Building and Maintenance Codes.* The new uniform physical condition standards established by HUD do not supersede or preempt State and local building and maintenance codes with

Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 29, 1990) (NAHA), which amended section 6(j) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)) (the 1937 Act).

[2] The current regulatory provisions addressing the physical condition of public housing projects are found in several sections of HUD's regulations in Title IX of 24 CFR: §§ 901.30 (of the PHMAP regulations), 941.203 (of the Public Housing Development regulations), 965.704 (of the PHA-Owned or Leased Projects regulations), and 968.315 (of the Comprehensive Improvement Program Regulations).

[3] As the proposed regulatory text will show, the physical condition standards are referred to as ''decent, safe, sanitary and in good repair.'' As the preamble discussion notes the statutory physical condition standard for public housing is expressed in terms of ''decent, safe and sanitary.'' For FHA-related properties, the statutory standard is expressed in terms of ''good repair and condition.'' In adopting physical condition standards that are applicable to both public housing and FHA-related properties, HUD uses the descriptive term—''decent, safe, sanitary and in good repair.''

which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

*Uniform Physical Condition Standards.* The uniform physical standards being established would set parameters under which public housing (as well as other HUD assisted housing) must be maintained and will be evaluated. These standards are designed to analyze, score, and rank the overall and general physical condition of a project. This evaluation would not focus on a single element, but would take into consideration significant observable deficiencies and score compliance taken as a whole. A single critical element with a major defect (for example, an inoperable heating system), however, could have a significant impact on a project's overall evaluation. The standards address six major areas of the housing to be evaluated: (1) site; (2) building exterior; (3) building systems; (4) dwelling units; (5) common areas; and (6) health and safety. The standards emphasize health and safety considerations as essential to housing that is decent, safe, and sanitary. Appendix A to the proposed rule lists the items to be inspected within each of the six major areas.

*Physical Inspection of Public Housing.* Public housing is not only currently subject to a standard of decent, safe and sanitary, there is also an obligation on the PHA to ''inspect'' public housing units. Section 6(j)(1)(G) of the 1937 Act requires the PHA to inspect units to ascertain ''maintenance or modernization needs.'' This corresponding regulatory requirement is found in HUD's regulations at 24 CFR 901.30. Section 901.30, captioned ''Indicator #5, Annual Inspection of Units and Systems,'' provides in relevant part that: ''All occupied units are required to be inspected.'' This rule would not change the current requirement for an annual inspection. That requirement remains and is provided for under subpart D of this proposed rule, Management Operations.

Under this proposed rule, an assessment of the physical condition of a PHA's properties would be determined by an independent inspection of the properties by HUD. Consistent with HUD's responsibilities under the Assessment Center, HUD intends to conduct independent physical inspections, using a new uniform, objective, and computerized inspection software developed by HUD, of a statistically valid number of public housing units for each PHA, in order to confirm compliance with the uniform physical condition standards. The determination of whether public housing meets the standard of decent, safe, and sanitary would be based on a review of observable deficiencies of the site, the building exterior, the building systems, the dwelling units, the common areas, and the health and safety conditions of such housing. The computer program will generate a score for these components. The scores will allow HUD to assess the overall physical condition of the public housing as determined by the computer-based inspection.

To ensure the independence of the physical inspection, HUD intends to contract with private inspection firms to perform the inspections. All inspectors will be trained under HUD auspices in the use of the inspection protocol. Upon being certified, inspectors will obtain their PHA inspection assignment from the Assessment Center. The inspector will download property profile information on the selected PHA's projects via the Internet from the HUD Home page. The inspector will complete the inspection using a hand-held computer that uses the HUD software. After the inspection is completed, the inspector will upload the inspection results to HUD's central information data repository (CIDR) where it will be verified for accuracy and then scored using predetermined weights based on the relative importance of the property areas inspected and factual observed deficiencies identified during the inspection. HUD will exercise quality control procedures over the contractor inspections to assure the validity and quality of the inspections.

*Total Points for PHAS Indicator* #1. The total point value of the Physical Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Physical Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

2. PHAS Indicator #2—Financial Condition

Subpart C of this proposed rule addresses the Financial Condition Indicator and would establish the process for the assessment of a PHA's financial condition. The rule would require PHAs to submit to HUD, on an annual basis, certain financial information, prepared in accordance with generally accepted accounting principles (GAAP), as those principles are prescribed by the Governmental Accounting Standards Board (GASB). The rule also requires that the annual financial report due to HUD must be submitted electronically and in a uniform format, with the electronic mode and format to be determined by HUD. The objective of the Financial Condition Indicator is to measure the financial condition of PHAs for the purpose of evaluating whether they have sufficient financial resources and are managing those financial resources effectively to support the provision of decent, safe, and sanitary housing.

*Generally Accepted Accounting Principles (GAAP).* Accounting and reporting in accordance with GAAP would bring much needed consistency to HUD program evaluation. GAAP requires the participant to manage its accounting and reporting in accordance with a standard set of rules published by auditing and accounting professionals and recognized both within and outside of government. The use of GAAP, therefore, would enable HUD and program participants to account for transactions and report results of operations using widely accepted protocols. The audit process would be enhanced by the use of GAAP, reducing audit costs. The resulting reports are widely accepted by industry and government and are, therefore, widely understood. The relative consistency of GAAP would allow HUD to perform analysis on its large housing portfolio in ways that assure the overall reliability and validity of the results.

The discussions that HUD had with PHAs, PHA representatives, residents and other interested parties about the new PHAS included conversion of PHA financial reports to GAAP. From these discussions, HUD has learned that GAAP accounting and reporting is more meaningful than present HUD accounting, and that the majority of PHAs seek the benefits of the change. A number of PHAs already have begun using GAAP or are in the process of converting to GAAP. At least two States (Louisiana and Tennessee) require that all PHAs in those States convert their HUD basis of accounting financial statements to a GAAP basis for State reporting purposes. Therefore, PHAs, as well as the accountants and auditors in those two States, have experience with the GAAP conversion process. Additionally, several large PHAs (New York, Chicago, Denver, Seattle, and Baltimore, for example) have already converted to GAAP. Further, it is expected that many PHAs have quantified the effect of the differences between GAAP and the HUD basis of accounting because of the guidance given in the Public and Indian Housing Low Rent Technical Accounting Guide and because of other business and operating needs (e.g., the need to fund liabilities for sick and vacation leave).

For those PHAs that may not be familiar with GAAP or that have not had

occasion to prepare GAAP financial reports for other submissions (for example, reports that may be required to be submitted to State or local governments), accounting support services are an eligible expense under the Performance Funding System (PFS). To ease the conversion, the current PHA accounting guide and chart of accounts will not be modified except to add those additional accounts needed to record new transactions in accordance with GAAP or to enhance the existing chart of accounts to address current business operation requirements. Some illustrative examples of these new accounts are: (1) an allowance for uncollectible receivables and the related bad debt expense; (2) an allowance for depreciation of buildings, structures and equipment and the related depreciation expense; and (3) liability and expense accounts for probable losses expected from litigation, claims, and other contingencies. While a PHA's accounting staff will have to quantify the amounts to be recorded in these new accounts, the PHA's independent public accountants can provide guidance on GAAP. HUD also will offer guidance for purposes of standardizing the conversion results. Since HUD funds all audit costs as an add-on to the performance funding system (PFS), PHAs should not bear any increase in the costs of an audit that may result in converting to GAAP.

*Electronic Submission.* HUD is aware that automated systems are being used more extensively among the various entities that participate in HUD programs, and the use of such systems is expanding within HUD itself. Vice President Gore's Report of the National Performance Review has, as a stated objective, the expanded use of new technologies and telecommunications to create an electronic government. (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113–117, Ref. 2). Requiring the electronic submission of financial data in HUD housing programs is another step in implementing the Vice President's objective. The electronic submission of information results in significant benefits, such as increasing the speed of information preparation and exchange, cost savings from reduced need for storage space, improved product because electronic preparation generally results in reduced errors, and faster HUD review and analysis.

This rule would require PHAs to submit their financial reports to HUD electronically, via the Internet, rather than through tape, diskette, or paper. HUD, however, may approve transmission of the data by tape or diskette if HUD determines that the cost of electronic Internet transmission would be excessive. HUD anticipates that the instances in which covered entities will not be able to comply with submission of financial data electronically via Internet will be very few. This rule would help to bring HUD up to speed with its program partners in terms of modern technology.

*Assessing Financial Condition.* The key indicators used to distinguish PHAs in strong financial condition from those which may be financially troubled include: (1) A measure of liquidity, the Current Ratio (defined as current assets divided by current liabilities), and (2) a measure of viability, the Number of Months Expendable Fund Balance (defined as the Expendable Fund Balance divided by monthly Operating Expenditures); (3) Days Receivable Outstanding (defined as the average number of days tenant receivables are outstanding); (4) Vacancy Loss (defined as the loss of potential rental income due to vacancy); (5) Expense Management/Energy Consumption (defined as expense per unit for key expenses); and (6) Net Income or Loss divided by the Expendable Fund Balance (defined as the net income or loss, if any, for the operating year, divided by the expendable fund balance).

The liquidity measure is evidence of the property's ability to cover its near term obligations with resources available in the near term. The viability measure is evidence of the PHA's ability to operate using its expendable fund balance without relying on additional funding. Prudent financial management practices, appropriate to the PHA environment, suggest that these components be maintained at certain levels, although a range may be acceptable for peer groups of PHAs.

The Days Receivable Outstanding component measures the ability of the PHA to collect its tenant receivables in a timely fashion. The inability to collect tenant receivables in a timely fashion might help explain poor performance in the liquidity and viability measures.

The Vacancy Loss component measures the extent to which the PHA is maximizing its revenue from operations.

The Expense Management/Energy Consumption component, adjusted for size and region, and includes energy consumption expenses as well as any other factors that would reasonably contribute to differences in expense ratios, will provide a measure of the PHA's ability to maintain its expense ratios at a reasonable level relative to its peers.

Net Income or Loss divided by the Expendable Fund Balance will provide a measure of how the year's operations have affected the PHA's viability to a substantial degree.

*Total Points for PHAS Indicator* #2. The total point value of the Financial Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Financial Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

*Financial Reporting Compliance Dates.* HUD intends that the requirement of electronic submission of GAAP-based financial reports, in the manner and in the format prescribed by HUD, will begin with those PHAs with fiscal years ending September 30, 1999 and later. This compliance schedule will allow sufficient conversion time for PHAs that are not currently using GAAP. Unaudited financial statements will be required 60 days after the PHA's fiscal year end (i.e., November 30, 1999), and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133. A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report electronically and prepared in accordance with GAAP, in the manner and in the format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with the financial reporting requirements of this rule, but would not be required to do so.

3. PHAS Indicator #3—Management Operations

Subpart D of this proposed rule addresses the Management Operations Indicators of PHAs and provides for the assessment of a PHA's management operations. PHAS Indicator #3 (Management Operations) basically reflects the requirements of the existing PHMAP system.

The PHAS preserves the statutory indicators found in section 6(j) of the 1937 Act, with some minor reorganization (from that in the existing system) which is designed to reflect their integration into the broader PHAS assessment and to establish their new point values within the PHAS. The statutory indicators are: (1) Vacancy rate; (2) unexpended Section 14 (of the

1937 Act) funds; (3) rents uncollected; (4) energy consumption; (5) unit turn-around time; (6) outstanding work orders; and (7) annual inspection of units. The Management Operations Indicator of the PHAS incorporates the seven statutory indicators. As is currently the case under the existing system, statutory indicators (1) and (5) are combined under the new PHAS. The statutory energy consumption indicator is part of PHAS Indicator 2 (Financial Condition), just as it was folded into the financial management indicator of existing system. The energy/utility consumption expenses faced by a PHA on an annual basis will be part of the PHA's annual financial report to HUD.

With respect to non-statutory indicators, the security indicator remains part of the Management Operations assessment under the PHAS. The resident services and community building indicator is now replaced by a separate indicator (PHAS Indicator #4—Resident Service and Satisfaction). Similarly, the financial condition indicator is now replaced by a separate indicator (PHAS Indicator #2—Financial Condition).

The analysis of the individual statutory management indicators will not deviate significantly from the existing assessment system. Scores will continue to be based on a PHA's certification to the various management operations indicators. For example, under Management Indicator #1 (Vacancy Rate and Unit Turnaround Time), a low vacancy rate will score higher than a high vacancy rate. Under Management Indicator #4 (Work Orders) a high percentage of emergency work orders completed or abated within 24 hours or less will score better than a lower percentage of emergency work orders completed or abated within 24 hours or less.

As under the existing system, for the Management Operations Indicator of the PHAS, a PHA will continue to submit certifications as to its performance under each of the management indicators, and a PHA's certifications will be subject to independent verification. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories.

*Total Points for PHAS Indicator* #3. The total point value of the Management Operations Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Indicator #3 (Management Operations), a PHA must receive a score of at least 60 percent of the 30 points available.

4. PHAS Indicator #4—Resident Service and Satisfaction

Subpart E of this rule addresses PHAS Indicator #4, Resident Service and Satisfaction. This indicator assesses the level of resident satisfaction with PHA housing and services. This assessment would consist of existing PHMAP Indicator #7, resident services and community building, revised to (1) be consistent with the framework of the new PHAS, and (2) provide a separate resident services satisfaction survey. The objective of this Indicator #4 is to seek input from all public housing residents. To achieve an acceptable score under this indicator, a PHA must obtain a response from a statistically significant sample of public housing residents. The PHA will be responsible for maintaining original copies of completed survey data, subject to independent audit, and for developing a follow-up plan to address issues resulting from the survey.

The resident service and satisfaction assessment score will include three components of the survey process.

The first component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions to include topics such as: (1) Resident organizations; (2) program activities; (3) surrounding environment; (4) management responsiveness; (5) safety; (6) involvement; (7) resources; and (8) communication.

The second component will be a score based on the PHA's level of implementation and its follow-up or corrective actions based on the results of the survey.

The third component is verification that the data collection, tabulation and submission was undertaken consistent with guidelines to be provided by HUD. HUD reserves the right to conduct the survey at any time on its own.

*Total Points for PHAS Indicator* #4. The total point value of the Resident Service and Satisfaction Indicator is 10 of the 100 points available under the PHAS. A PHA will not receive any points if the survey is not conducted in accordance with HUD prescribed methodology or if the survey results are determined to be altered by the PHA.

5. Scoring Performance Under the PHAS and Consequences of the Score

*Issuance of the PHAS Score.* An *overall* PHAS score will be issued by HUD for each PHA 60 to 90 days after the end of the PHA's fiscal year. As discussed earlier in this preamble, each of the four PHAS indicators will be graded individually and these four indicators will then be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be graded individually and will be used to determine a single score for the major indicator. Based on the score, a PHA will fall into one of three categories:

*High Performer PHAs.* A PHA that achieves a score of at least 60% of the points available for each of the four indicators and achieves an *overall* score of 90% or greater shall be designated as a high performer. A PHA shall not be designated as a high performer if it scores below the threshold established for any of the four indicators. High performers will be afforded incentives and include relief from reporting and other requirements as described in the rule.

*Standard Performer PHAs.* A PHA that achieves a total score of less than 90% but not less than 60% shall be designated as a standard performer. All standard performers must correct reported deficiencies. A standard performer PHA that receives a score of less than 70% but not less than 60% shall be referred to the appropriate HUD area HUB/Program Center and will be required to submit an improvement plan to correct and eliminate deficiencies in the PHA's performance. Standard performers that receive a score over 70% may also be required to submit an improvement plan to correct or eliminate any deficiency.

*Troubled Performer PHAs.* A PHA that receives a total score of less than 60% shall be designated as a troubled performer. Upon designation as troubled, in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with the requirements of this rule, the PHA shall be referred to the TARC for longer term intensive assistance in raising its performance level.

The actions that HUB/Program Centers and the TARC with respect to PHAs receiving low or failing scores under the PHAS are discussed further in the following section.

6. Consequences of a PHAS Score

As under the existing system, PHAS scores will be made public. PHAs designated as high performers will be relieved of certain HUD requirements, effective upon notification of a high performer designation. Additionally, high performer PHAs may be eligible for bonus points for funding competitions, where permissible by the statute and regulations governing the grant program. High performer PHAs also will receive a Certificate of Commendation from HUD and public recognition of their

outstanding performance. Representatives of high performer PHAs may be requested to serve on HUD working groups that will advise HUD in such areas as troubled PHAs and performance standards for all PHAs.

*Referral to the HUB Program Center.* PHAs that are designated as standard performer and have a score of less than 70% but not less than 60% will be referred to HUD's area HUB/Program Center. The HUB/Program Center will work with the PHA to correct any deficiency indicated in its assessment within a period of 90 days, as described in the Improvement Plan to be submitted to HUD. The Improvement Plan will, among other things, describe the procedures that the PHA will follow to correct the deficiencies. If the PHA fails to submit an acceptable Improvement Plan or correct deficiencies within the time specified in an Improvement Plan, the HUB/Program Center will refer the PHA to the TARC for appropriate action.

*Referral to the TARC.* PHAs that are designated as troubled are referred to the TARC. The TARC will require the troubled PHA to prepare and execute a Memorandum of Agreement (MOA), a binding contractual agreement by which the PHA will commit to take certain action that will lead to its recovery from a troubled status. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include, among other things, annual and quarterly performance targets and strategies to be used by the PHA in achieving the performance targets. The TARC may impose budget and/or management controls on a PHA referred to the TARC.

*Referral to the Enforcement Center.* A troubled PHA that fails to execute or meet the requirements of the MOA will be referred to the Enforcement Center. The Enforcement Center shall initiate judicial appointment of a receiver, and where appropriate, the Enforcement Center may investigate the PHA and seek the imposition of civil or criminal penalties through the appropriate Federal government agencies or offices.

The purpose of the referral to one of the three centers discussed above is to provide for a more effective, efficient and expeditious resolution of a PHA's problems than is currently the case under the existing assessment system. The HUB/Program Center and the TARC will work with PHAs to quickly address performance deficiencies. The Enforcement Center will seek quick action to replace the management of PHAs that fail or refuse to address their performance deficiencies.

*Appeal of ''Troubled'' Designation.* As provided by section 6(j) of the 1937 Act, a PHA may appeal designation as a trouble agency (including designation as troubled with respect to the modernization program); petition for removal of such designation; and appeal any refusal to remove such designation as permitted under section 6(j)(2)(A)(iii) of the 1937 Act. The appeal shall be submitted by a PHA to the Assessment Center within 30 days of a PHA's receipt of its score, and shall include supporting documentation and justification of the reasons for the appeal. Appeals submitted to the Assessment Center without appropriate documentation will not be considered and will be returned to the PHA. Upon receipt of an appeal from a PHA, the Assessment Center will convene a Board of Review (the Board) to evaluate the appeal and its merits for purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the TARC).

HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the time period provided is grounds for denial of an appeal.

7. Timeline for Implementation of Inspection and Reporting Dates Under the PHAS

The new PHAS is proposed to become effective for PHAs with fiscal years ending September 1999 and later. Financial reports due for PHAs' fiscal years ending in September, 1999 and later must be prepared on a GAAP basis. The first scores under the new PHAS will be issued not later than December, 1999 for PHAs with FYs ending in September, 1999. Thus, PHAs will have at least one year before the new PHAS scores are issued. Until September 30, 1999, PHAs will continue to be scored under the current PHMAP. During this one year transition period, advisory scores for physical condition and financial management may be issued to provide guidance to PHAs. The implementation schedule for inspection of public housing properties and reporting is as described in the following table:

REAL ESTATE ASSESSMENT CENTER (REAC)

[Assessment Periods and Reporting Dates]

| REAC assessment results | | Financial reporting | Physical inspection | Management operations | Resident survey |
|---|---|---|---|---|---|
| Score issued | Period covered fiscal year end (1) | Due date (2) | Inspection dates (3) | Submission due date (4) | Survey dates (5) |
| 12/1999 | 9–30–99 | 11–30–99 | 7/99–9/99 | 11–30–99 | 4/99–9/99 |
| 03/2000 | 12–31–99 | 2–28–2000 | 10/99–12/99 | 2–28–2000 | 10/99–12/99 |
| 06/2000 | 3–31–2000 | 5–31–2000 | 1/2000–3/2000 | 5–31–2000 | 1/2000–3/2000 |
| 09/2000 | 6–30–2000 | 8–31–2000 | 4/2000–6/2000 | 8–31–2000 | 4/2000–6/2000 |
| 12/2000 | 9–30–2000 | 11–30–2000 | 7/2000–9/2000 | 11–30–2000 | 7/2000–9/2000 |

**Notes:**

1. The period covered for each indicator will be the PHA's entire fiscal year ending on dates shown above. Once the new PHAS is effective, a PHA cannot change its fiscal year for a period of three years.

2. PHAs with fiscal years ending 9–30–99 and later must provide GAAP financial reports. These reports must be provided by electronic submission not later than 60 days after the end of the PHA's FY. Audited GAAP reports (due 9 months after the close of the FY in accordance with the Single Audit Act and OMB Circular A–133) will be used to update and confirm unaudited financial results. If significant differences are noted between unaudited and audited results, scoring penalties will apply. For those PHAs that spend less than $300,000 of Federal funds, HUD cannot require or pay for an audit in accordance with the Single Audit Act. HUD, however, can require and pay for an ''Agreed-Upon Procedures'' report that could be specifically directed at verifying calculations.

3. Physical inspections will be scheduled to approximate the new PHAS calculation dates; i.e. within the final quarter of the PHA's fiscal year.

4. The certifications and supporting documentation required for the Management Operations Indicator will be due 60 days after the end of the PHA's fiscal year.

5. Resident surveys will be required to be conducted during the course of a PHA's fiscal year and will be required to be submitted by a PHA at the time that the PHA submits the certifications required under the Management Operations Indicator.

8. Other Issues Related to the New PHAS

*PHA Fiscal Year for First Three Years of the new PHAS.* As noted in footnote 1 to the chart, to allow for a period of consistent assessments to refine and make necessary adjustments to the new PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of the PHAS.

*Compliance with Other Departmentwide and Program Specific Requirements.* The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with every departmentwide or program specific requirement. For example, a PHA must comply with fair housing and equal opportunity requirements, requirements under Section 504 of the Rehabilitation Act of 1973, and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

*Adding, Subtracting and Modifying Indicators.* HUD reserves the right to add new indicators or components of indicators, or remove indicators or modify indicators of the new PHAS if HUD believes that such action will contribute to a comprehensive and more accurate assessment of a PHA's performance. For example, HUD may include in the Management Operations Indicator a component on verification of tenant income by a PHA. PHAs and the public will be notified of any change in indicators or components through issuance of the appropriate type of notice.

*Streamlining of Regulation.* Consistent with Executive Order 12866 on Regulatory Planning and Review, HUD reviews its regulations to determine, among other things, whether the regulations are redundant or duplicative of other HUD or other agency regulations, and should therefore be streamlined or consolidated. As part of this review, streamlining or consolidation changes may be made to this rule at the final rule stage.

## IV. Justification for 30-Day Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the announcement, through this proposed rule, of HUD's new PHAS has been developed with the participation of PHAs, PHA representatives, residents, representatives from resident organizations, and experts in the field of finance and real estate. Therefore, the proposal of a new assessment system, and the fundamental concepts and components of this new system are not unfamiliar to PHAs and public housing residents. As discussed earlier in the preamble and in this section, the diagnostic tools (physical assessment, financial assessment and resident services and satisfaction) that are added to the current ''management'' assessment of the existing system are requirements and standards familiar to PHAs.

With respect to the uniform standards for physical condition and financial reporting, the components of these standards are not significantly ''new.'' HUD's physical condition standards closely resemble the Section 8 housing quality standards and, are therefore, standards that the PHAs are familiar with. The financial reporting requirements, as discussed earlier in this preamble, provide for a new submission format, electronic and in a uniform format prescribed by HUD, but the overall content of the report largely includes the financial information that PHAs are already submitting in their annual financial reports. The requirement to prepare the financial reports in accordance with GAAP will be a change for some PHAs, but many PHAs are already preparing GAAP financial reports. The rule provides a sufficient period for PHAs to convert to GAAP. HUD also will offer guidance for purposes of standardizing the conversion results, and since HUD funds audit costs, PHAs should bear minimal, if any, increase in the costs of an audit that may result in converting to GAAP.

With respect to the Management Operations Indicator, this is substantially the same as in existing PHMAP, and therefore already familiar to PHAs.

With respect to the new Resident Service and Satisfaction Indicator, this indicator builds on the existing resident indicator in PHMAP.

For the above reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of publication in the **Federal Register**.

## V. Findings and Certifications

*Paperwork Reduction Act Statement*

The proposed information collection requirements contained at §§ 901.25(b)(3) (Certification of the extent to which the physical condition and neighborhood environment adjustment applies; 901.25(b)(5) (Maintenance of supporting documentation for physical condition and neighborhood environment adjustment); 901.33(a) (Annual financial reports); 901.50(b) (Reporting information on resident service and satisfaction); 901.60 (Data collection); 901.63 (Exclusion request); 901.69 (PHA right of petition and appeal); 901.75 (MOA); 901.77 (Improvement Plan); and 901.81 (Notice and response), of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), HUD is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal:

Public Housing Assessment System (PHAS)

(2) Summary of the collection of information:

PHAs shall be required to maintain certain records and submit certain information, as specified in the rule text, for the purpose of HUD review. The HUD review will result in a numerical score and the designation of a PHA's status. A PHA's status may result in: the award of recognition and incentives from HUD, the requirement

to design and implement a plan to increase the PHAS score, or the referral of the PHA for enforcement action. The PHA may petition or appeal certain aspects of the scoring and designation, and is provided an opportunity to respond before the imposition of enforcement actions.

(3) Description of the need for the information and its proposed use:

The information is needed to assess the performance of a PHA in essential housing operations. The information will be used to reward good performance and improve or correct deficient performance.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be PHAs. The estimated number of respondents is included in paragraph (5), immediately below. The proposed frequency of responses is once annually.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING AND RECORDKEEPING BURDEN

| Section reference | Number of parties | Annual freq. of requirement | Est. avg. time for requirement (hours) | Est. annual burden (hours) |
|---|---|---|---|---|
| 901.25(b)(3) | 3,268 | 1 | .5 | 1,634 |
| 901.25(b)(5) | 750 | 1 | .5 | 375 |
| 901.33(a) | 3,268 | 1 | 1.0 | 3,268 |
| 901.50(b) | 3,268 | 1 | 10.0 | 32,680 |
| 901.50(b) | 1.2 million | 1 | .5 | 600,000 |
| 901.60 | 3,268 | 1 | 25.0 | 81,700 |
| 901.63 | 350 | 1 | 2.0 | 700 |
| 901.69 | 200 | 1 | 2.0 | 400 |
| 901.75 | 100 | 1 | 25.0 | 2,500 |
| 901.77 | 500 | 1 | 10.0 | 5,000 |
| 901.81 | 5 | 1 | 2.0 | 10 |
| Total Reporting and Recordkeeping Burden (Hours) | | | | 728,267 |

(b) In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4313) and must be sent to:

Joseph F. Lackey, Jr., UD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

*Environmental Review*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This proposed rule would revise HUD's existing regulations for the assessment of public housing (PHMAP). The new the PHAS incorporates the statutory indicators of PHMAP, and adds three additional indicators. One of the new indicators—physical condition—would assess the extent to which PHAs are providing public housing that is decent, safe, and sanitary. As explained above, public housing has always been subject to a statutory standard of ''decent, safe, and sanitary.'' This rule proposes to simply provide a clear and objective statement of the standard. This indicator would also entail an annual independent HUD inspection of public housing, but it would not impose additional inspection requirements upon PHAs. The clarity and consistency of this new indicator would provide a fair, accurate, and reliable assessment of the physical condition of the large public housing portfolio. However, since this proposed rule would not alter the statutory standard for physical condition, nor impose additional inspection obligations, the new physical condition indicator would not have a

significant economic impact on a substantial number of small entities.

The second indicator—financial condition—would assess the financial condition of PHAs, requiring them to submit financial reports to HUD electronically and in accordance with GAAP. HUD estimates that electronic submission of financial information will be less burdensome to PHAs, since many PHAs are making more extensive use of automated systems. This proposed rule would allow exceptions if the cost of electronic submission would be excessive. GAAP-based accounting reports, which are widely accepted and recognized, are not substantially different than the reports that PHAs are currently submitting. A number of PHAs are already required to use GAAP or are otherwise using GAAP, and the majority of the PHAs with which HUD has consulted support the change to GAAP. For those PHAs that are not yet using GAAP, HUD is taking several steps to ease the conversion, including making only simple additions to the current PHA accounting guide and chart of accounts, and providing other conversion guidance and training, particularly to small entities. Increasing the speed of information exchange (through electronic submission) and the consistency and accuracy of the information (through GAAP) would greatly enhance the assessment of a PHA's financial condition. However, this new indicator would not have a significant economic impact on a substantial number of small entities.

The fourth indicator—resident service and satisfaction—entails a new resident service and satisfaction survey. This survey is key to obtaining input from public housing residents, which is an important aspect of assessing public housing. HUD intends that this survey will be conducted through an automated process, and accordingly, will present a minimal administrative burden for PHAs in terms of administering and evaluating the survey. HUD intends to provide the survey format and the electronic reporting format, as well as software specifications. Therefore, this survey would not have a significant economic impact on a substantial number of small entities.

HUD is also seeking to minimize any burden on PHAs by allowing a significant transition period for converting to the new PHAS. PHAs will have at least one year before new scores are issued under the PHAS. During that transition period, HUD intends to issue advisory scores regarding physical condition and financial management to provide guidance to PHAs and to ease the conversion to the new PHAS.

The new PHAS is fundamentally designed to provide relevant and verifiable measures that directly relate to a PHA's performance and that result in an accurate and reliable score. This improved assessment process will allow HUD to target its oversight resources on those PHAs most in need of attention; high-performing PHAs will receive recognition, along with reduced HUD scrutiny and additional flexibility. Since the revised assessment system in this rule would not impose any significant new requirements upon PHAs, and since HUD will assist PHAs in their conversion to the system, this rule would not have a significant economic impact on a substantial number of small entities. However, HUD specifically invites comments regarding any less burdensome alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

*Federalism*

The General Counsel, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. The proposed rule would not create any new significant requirements. As a result, the proposed rule is not subject to review under the Order.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

**List of Subjects in 24 CFR Part 901**

Administrative practice and procedure, Public housing, reporting and recordkeeping requirements.

Accordingly, part 901 of title 24 of the Code of Federal Regulations is proposed to be revised to read as follows:

## PART 901—PUBLIC HOUSING ASSESSMENT SYSTEM

### Subpart A—General Provisions

Sec.
901.1 Purpose and general description.
901.3 Scope.
901.5 Applicability.
901.7 Definitions.

### Subpart B—PHAS Indicator #1: Physical Condition

901.20 Physical condition assessment.
901.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).
901.25 Physical condition scoring and thresholds.
901.27 Physical condition portion of total PHAS points.

### Subpart C—PHAS Indicator #2: Financial Condition

901.30 Financial condition assessment.
901.33 Financial reporting requirements.
901.35 Financial condition scoring and thresholds.
901.37 Financial condition portion of total PHAS points.

### Subpart D—PHAS Indicator #3: Management Operations

901.40 Management operations assessment.
901.43 Management operations performance standards.
901.45 Management operations scoring and thresholds.
901.47 Management operations portion of total PHAS points.

### Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

901.50 Resident service and satisfaction assessment.
901.53 Resident service and satisfaction scoring and thresholds.
901.55 Resident service and satisfaction portion of total PHAS points.

### Subpart F—PHAS Scoring

901.60 Data collection.
901.63 PHAS scoring.
901.67 Score and designation status.
901.69 PHA right of petition and appeal.

### Subpart G—PHAS Incentives and Remedies

901.71 Incentives for high performers.
901.73 Referral to an Area HUB/Program Center.
901.75 Referral to a TARC.
901.77 Referral to the Enforcement Center.
901.79 Substantial default.
901.83 Interventions.
901.85 Resident petitions for remedial action.

### Appendix A to Part 901—Areas and Items to be Inspected

**Authority:** 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

## Subpart A—General Provisions

### § 901.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a comprehensive management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations,

including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator (Apprentice)#1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA on the management operations indicator and the resident service and satisfaction indicator. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following [*effective date of final rule to be inserted at final rule stage*].

**§ 901.3 Scope.**

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every departmentwide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. PHAs' adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

**§ 901.5 Applicability.**

(a) *PHAs, RMCs, AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs). The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(b) *PHA ultimate responsible entity under ACC.* Due to the fact that the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable).

(c) *Assumption of management operations by AME.* When a PHA's management operations have been assumed by an AME:

(1) If the AME assumes only a portion of the PHA's management operations, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(2) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

**§ 901.7 Definitions.**

As used in this part:

*Adjustment for physical condition (project age) and neighborhood environment* is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value over the total points available for PHAS Indicator #1 (established in subpart B of this part).

*Assessed fiscal year* is the PHA fiscal year that has been assessed under the PHAS.

*Average number of days nonemergency work orders were active* is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;

(ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;

(2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

*Days Receivable Outstanding* is Tenant Receivables divided by Daily Tenant Revenue.

*Deficiency* means any PHAS score below 60% of the available points in an indicator or component.

*Improvement plan* is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the indicators and components within the indicator(s), identified as a result of the PHAS assessment when an MOA is not required.

*Reduced actual vacancy rate within the previous three years* is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) with the vacancy rate of that fiscal year which is two years previous to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

*Reduced the average time nonemergency work orders were active during the previous 3 years* is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) with the average time nonemergency work orders were active in that fiscal year that is 2 years previous to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous 3 years, the PHA shall retain justifying documentation to support its certification for HUD post review.

*Vacancy loss* is vacant unit potential rent divided by gross potential rent.

*Work order deferred for modernization* is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in

the following year if there are less than three months remaining before the end of the PHA fiscal year when the work order was generated, under the PHA's modernization program or other PHA capital improvements program.

## Subpart B—PHAS Indicator #1: Physical Condition

### § 901.20 Physical condition assessment.

(a) *Objective*. The objective of the Physical Condition Indicator is to determine whether a PHA is maintaining its public housing in a condition that is decent, safe, sanitary and in good repair (DSS/GR), as this standard is defined § 901.23.

(b) *Physical inspection under PHAS Indicator* #1. REAC will provide for an independent physical inspection of, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine compliance with DSS/GR standard.

(c) *PHA physical inspection requirement*. The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)), and § 901.43(a)(5).

(d) *Compliance with State and local codes*. The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

### § 901.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).

(a) Public housing must be maintained in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of public housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(1) *Site*. The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior*. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems*. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units*. (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas*. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(6) *Health and safety concerns*. All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and are accessible to all residents, and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(b) Appendix A to this part lists the areas to be inspected and the items in each area to be inspected.

### § 901.25 Physical condition scoring and thresholds.

(a) *Scoring*. Under PHAS Indicator #1, REAC will calculate a score of the overall condition of the PHA's public housing portfolio which reflects weights based on the relative importance of the individual inspectable areas and the deficiencies observed.

(b) *Adjustment for physical condition (project age) and neighborhood environment*. In accordance with section 6(j)(1)(I)(2) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), the physical score for a project will be upwardly adjusted to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the project or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to not unfairly penalize the PHA, and to appropriately apply the adjustment.

(1) Adjustments in three areas. Adjustments to the PHA physical project score will be made in three factually observed and assessed areas (inspectable areas):

(i) Physical condition of the site;

(ii) Physical condition of the common areas on the project; and

(iii) Physical condition of the building exteriors.

(2) Definitions. Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to projects over ten years old and that have not been had substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to projects located where the immediate surrounding neighborhood (that is a majority of the census tracts or

census block groups on all sides of the development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

(3) Adjustment is for physical condition (project age) neighborhood environment. HUD will adjust the physical score of a PHA's project subject to both the physical condition (project age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by project, to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHAS Certification (which is available from the Department of Housing and Urban Development, HUD Custom Service Center, 451 Seventh Street, SW, Room B–102, Washington, DC 20410; telephone (800) 767–7468), the extent to which the conditions apply, and to the inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a PHA's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective inspectable area(s).

(4) *Scattered site projects.* The Date of Full Availability (DOFA) shall apply to scattered site projects, where the age of units and buildings vary, to determine whether the projects have received substantial rehabilitation within the past ten years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the project's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Projects that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the projects and the record of capital improvements, indicating that these particular projects have not received modernization funds.

(iii) PHAs shall also document that in all cases, projects that were exempted for other reasons were not included in the calculation.

(c) *Thresholds.* In order to receive a passing score under the Physical Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Physical Condition Indicator.

### § 901.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

## Subpart C—PHAS Indicator #2: Financial Condition

### § 901.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator on the basis of the annual financial report provided in accordance with § 901.33.

### § 901.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must provide to HUD, on an annual basis, such financial information, as required by HUD. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance;

(2) Submitted electronically in the electronic format designated by HUD; and

(3) Submitted in such form and substance prescribed by HUD.

(b) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending September 30, 1999 and thereafter. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited report earlier than the due date of November 30, 1999 must submit its financial report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

### § 901.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score that relies on the key components of financial health and management as well as audit and internal control flags.

(1) The key components of PHAS Indicator #2 include:

(i) Current Ratio—current assets divided by current liabilities;

(ii) Number of Months Expendable Fund Balance—number of months a PHA can operate on the Expendable Fund Balance without additional resources; Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources; unreserved and undesignated fund balance;

(iii) Days Receivable Outstanding—average number of days tenant receivables are outstanding;

(iv) Vacancy Loss—loss of potential rent due to vacancy;

(v) Expense Management/Energy Consumption—expense per unit for key expenses, including energy consumption; and

(vi) Net Income or Loss divided by the Expendable Fund Balance—measures how the year's operations have affected the PHA's viability.

(2) *Additional components.* Additional components may be used to identify circumstances in which there

exists the possibility of higher risk of waste, fraud and abuse. These components will be used to detect fraud and will be used to generate ''flags'' that will signal field staff, Enforcement Center staff, or fraud investigators to take appropriate action. These components will primarily relate to financial management, but may also be used to provide a PHA with benchmarking information to allow the PHA to measure its own performance against its peers.

(b) *Thresholds.* In order to receive a passing score under the Financial Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Financial Condition Indicator.

**§ 901.37 Financial condition portion of total PHAS points.**

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

## Subpart D—PHAS Indicator #3: Management Operations

**§ 901.40 Management operations assessment.**

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the U.S. Housing Act of 1937, and an additional non-statutory indicator (security) as provided in § 901.43.

**§ 901.43 Management operations performance standards.**

(a) *Management operations indicators.* The following indicators will be used to assess a PHA's management operations:

(1) *Management Indicator #1—Vacancy rate and unit turnaround time.* This management indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this management indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time.

(2) *Management Indicator #2—Modernization.* This management indicator is automatically excluded if a PHA does not have a modernization program. This management indicator examines the amount of unexpended funds over three Federal fiscal years (FFY) old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. All components of this management indicator #2 apply to the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), the HOPE VI assistance, vacancy reduction, and lead based paint risk assessment funding (1992–1995), and any successor program(s) to the CGP or the CIAP.

(3) *Management Indicator #3—Rents uncollected.* This management indicator examines the PHA's ability to collect dwelling rents owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected.

(4) *Management Indicator #4—Work orders.* This management indicator examines the time it takes to complete or abate emergency work orders, the average number of days non-emergency work order were active, and any progress a PHA has made during the preceding three years to reduce the period of time non-emergency maintenance work orders were active. Implicit in this management indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(5) *Management Indicator #5—PHA annual inspection of units and systems.* This management indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. This management indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(6) *Management Indicator #6—Security.* This management indicator evaluates the PHA's performance in tracking crime related problems in their developments, reporting incidence of crime to local law enforcement agencies, the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (One-Strike and You're Out) (42 U.S.C. 1437d(r)), of applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any HUD drug prevention or crime reduction grant(s). A PHA may receive credit for performance under non-HUD funded programs if it provides auditable financial and statistical documentation for these programs. A PHA with fewer than 250 units will not be assessed under this management indicator unless it provides auditable financial and statistical documentation for these programs.

(b) *Reporting on performance under the Management Operations Indicator.* Each PHA will provide to HUD a certification on its performance under each of the management indicators in paragraph (a) of this section. The certifications shall comply with the requirements of § 901.60.

**§ 901.45 Management operations scoring and thresholds.**

(a) *Scoring.* Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA which reflects weights based on the relative importance of the individual management indicators.

(b) *Thresholds.* In order to receive a passing score under the Management Operations Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this PHAS Indicator #3. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Management Operations Indicator.

**§ 901.47 Management operations portion of total PHAS points.**

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

## Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

**§ 901.50 Resident service and satisfaction assessment.**

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Reporting information on resident service and satisfaction.* The assessment will be performed through the use of a resident service and satisfaction survey to be administered by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for maintaining original copies of completed survey data, subject to independent audit, and for developing a follow-up plan to address issues resulting from the survey.

**§ 901.53 Resident service and satisfaction scoring and thresholds.**

(a) *Scoring.* Under PHAS Indicator #4, REAC will calculate a score that includes three components of the survey process. One component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions, to include topics such as: resident organizations; program activities; surrounding environment; management responsiveness; safety; involvement; resources; and communication. The second component will be a score based on the level of implementation and follow-up or corrective actions based on the results of the survey. The final component is verification that the data collection, tabulation and submission was conducted in a manner consistent with guidance provided by HUD.

(b) *Thresholds.* A PHA will not receive any points under this PHAS Indicator if the survey is not conducted in accordance with a HUD prescribed methodology or the survey results are determined to be altered by the PHA. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if it receives at least 6 points, or 60% of the available points under this PHAS Indicator #4.

**§ 901.55 Resident service and satisfaction portion of total PHAS points.**

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

## Subpart F—PHAS Scoring

**§ 901.60 Data collection.**

(a) *Fiscal Year Reporting Period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of this part.

(b) *Physical Condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial Condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than 60 days after the end of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management Operations and Resident Service and Satisfaction Information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Services Satisfaction, of this part not later than 60 days after the end of the PHA's fiscal year.

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15 day period past the due date. If all certifications or year-end financial information are not received within 90 days past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators and components certified to, which shall result in troubled and mod-troubled designations.

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s) or component(s) shall receive a score of 0 for the relevant indicator(s) or component(s), and its overall PHAS score shall be lowered.

(3) A PHA's PHAS score under individual indicators or components, or its overall PHAS score, may be changed by HUD pursuant to the data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(g) *Management operations assumed by an RMC.* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

**§ 901.63 PHAS scoring.**

(a) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA 60 to 90 days after the end of the PHA's fiscal year.

(b) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(c) *Adjustments to the PHAS score.* Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

(d) *Posting and publication of PHAS scores.* Each PHA shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register**.

**§ 901.67 Score and designation status.**

(a) *Designation status corresponding to score.* A PHA will be scored with a corresponding designation of status as follows:

(1) *High Performer.* A PHA that achieves a score of at least 60% of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90% or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 901.71.

(2) *Standard Performer.* A PHA that achieves a total PHAS score of less than 90% but not less than 60% shall be designated a standard performer. All standard performers must correct reported deficiencies. A standard performer that receives a score less than 70% but not less than 60% shall be subject to other oversight, as described in § 901.73. A PHA that achieves a score of less than 60% of the total points available under PHAS Indicators 1, 2 or 3 shall not be designated a standard performer, but shall be designated a troubled performer, as provided in paragraph (a)(3) of this section.

(3) *Troubled Performer.* A PHA that achieves a total PHAS score of less than 60%, or achieves a score of less than 60% of the total points available under PHAS Indicators 1, 2, or 3, shall be designated as troubled, and referred to the TARC as described in § 901.75. In accordance with section 6(j)(2) of the 1937 Act, a PHA that receives less than 60% of the maximum calculation for the modernization indicator under PHAS Indicator #3 (Management Operations, subpart D of this part) may be subject to the following sanctions: under the Comprehensive Grant Program to a reduction of formula allocation or other sanctions (24 CFR part 968, subpart C); under the Comprehensive Improvement Assistance Program to disapproval of new funding or other sanctions (24 CFR part 968, subpart B); or disapproval of funding under the HOPE VI Program.

(b) *Exceptional circumstances of high performer or standard performer*—(1) *Independent reviews, rescission of incentives or status.* In exceptional circumstances, even though a PHA has received designation as a high performer or standard performer, the HUB/Program Center may conduct any review as necessary, and deny or rescind incentives or high performer or standard performer status in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the management of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certification of indicators is not supported by the facts, resulting from such sources as an independent review, routine reports and reviews, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas (including areas not assessed by the PHAS). Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR part 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, form HUD–53012A, Section 4, Mission of the PHA). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(2) When a HUB/Program Center acts for any of the reasons stated in paragraph (b)(1) of this section, the HUB/Program Center will send written notification to the PHA with a specific explanation of the reasons. An informational copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

### § 901.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal.* As permitted under section 6(j)(2)(A)(iii), a PHA may:

(1) Appeal designation as a troubled agency (including designation as troubled with respect to the modernization program);

(2) Petition for removal of such designation; and

(3) Appeal any refusal to remove such designation.

(b) *Appeal process.* The appeal shall be submitted by a PHA to the REAC within 30 days of a PHA's receipt of its score, and shall include supporting documentation and justification of the reasons for the appeal. Appeals submitted to the REAC without appropriate documentation will not be considered and will be returned to the PHA.

(c) *Consideration of appeal by REAC.* Upon receipt of an appeal from a PHA, the REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate.

(d) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the 30-day period or any additional period granted by HUD is grounds for denial of an appeal.

## Subpart G—PHAS Incentives and Remedies

### § 901.71 Incentives for high performers.

(a) *Incentives for high-performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives:

(1) *Relief from specific HUD requirements.* A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(2) *Public recognition.* High-performer PHAs and RMCs that receive a score of at least 90% on each of the indicators for which they are assessed, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high-performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section, does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to

be conducted as circumstances may warrant.

(d) *HUB/Program Center to impose requirements.* The HUB/Program Center will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with § 901.67(b)(1).

**§ 901.73 Referral to an Area HUB/Program Center.**

(a) Standard performers will be referred to the HUB/Program Center for appropriate action. A standard performer that receives a total score of less than 70% but not less than 60% shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. A standard performer that receives a score of not less than 70% may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after a PHAS score is issued, a standard performer with a score less than 70% is required to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section and determined acceptable by the HUB/Program Center, for each indicator and/or component identified as deficient as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations. A RMC that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70% to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator and/or component of a PHAS indicator identified as deficient.

(c) *Correction of deficiencies*—(1) *Time period for correction.* After a PHA's receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator and/or component which was identified as a deficiency;

(2) Describe the procedures that will be followed to correct each deficiency;

(3) Provide a timetable for the correction of each deficiency; and

(4) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the TARC for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations.

**§ 901.75 Referral to a TARC.**

Upon designation of a PHA as troubled, in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. The actions to be taken by the TARC and the PHA shall be as follows:

(a) *Recovery plan and MOA.* Within 30 days of notification of the designation of a troubled PHA within its area, the appropriate TARC will deploy an on-site team to develop a Recovery Plan. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and designation as troubled. The Recovery Plan will incorporate a memorandum of agreement (MOA) as described in paragraph (c) of this section.

(b) *PHA review of recovery plan and MOA.* The PHA will have 10 days to review the recovery plan and the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the plan with its area TARC, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by the TARC, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(c) *Memorandum of Agreement (MOA).* The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators or components identified as a deficiency;

(2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management

controls by the TARC, declaration of substantial default and subsequent actions, including referral to the Enforcement Center for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the Enforcement Center; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(d) *Maximum recovery period.* Unless extended by the TARC and documented in the MOA, the maximum recovery period for a troubled PHA is the first full fiscal year following execution of the MOA.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUB/Program Center.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.*

(1) If a troubled PHA does not execute an MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score by the REAC, the TARC shall refer the PHA to the Enforcement Center, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g), substantial improvement is defined as 50% of the points needed to achieve a passing score.

(2) The following example illustrates the provisions of paragraph (g)(1) of this section:

*Example.* A PHA receives a score of 50; 60 is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a five point increase to continue recovery efforts in the TARC. If the PHA fails to achieve the 5 point increase, the PHA will be referred to the Enforcement Center.

**§ 901.77 Referral to the Enforcement Center.**

Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 901.75 constitutes a substantial default in accordance with § 901.79 and shall result in referral to the Enforcement Center. The Enforcement Center is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The Enforcement Center shall initiate the judicial appointment of a receiver or the interventions provided in § 901.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the Enforcement Center including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

**§ 901.79 Substantial default.**

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.75 , or to make reasonable progress to execute or meet requirements included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 901.75(h), in its PHAS score in one year following issuance of the failed score is in substantial default;

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as ''troubled PHAs,'' or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but are not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the

determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 901.83, and determined to be appropriate to remedy the noncompliance, citing § 901.83, and any additional authority for such action.

(2) *Receipt of notification*. Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification*. A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 901.83.

(4) *Emergency situations*. In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

**§ 901.83 Interventions.**

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or HUD, and upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

**§ 901.85 Resident petitions for remedial action.**

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

## Appendix A to Part 901—Areas and Items To Be Inspected

*AREA: Site*

Items

Fencing and Retaining Walls
Grounds
Lighting
Mail Boxes/Project Signs
Market Appeal
Parking Lots/Driveways
Play Areas and Equipment
Refuse Disposal
Roads
Storm Drainage
Walkways

*AREA: Building Exterior*

Items

Doors
Fire Escapes
Foundations
Lighting
Roofs
Walls
Windows

*AREA: Building Systems*

Items

Domestic Water
Electrical System
Elevators
Emergency Power
Fire Protection
HVAC
Sanitary System

*AREA: Dwelling Unit*

Items

Bathroom
Call-for-Aid
Ceiling
Doors
Electrical System
Floors
Hot Water Heater
HVAC System
Kitchen
Lighting
Outlets/Switches
Patio/Porch/Balcony
Smoke Detector
Stairs
Walls
Windows

*AREA: Common Areas*

Items

Basement/Garage/Carport
Closets/Utility/Mechanical
Community Room
Day Care

Halls/Corridors/Stairs
Kitchen
Laundry Room
Lobby
Office
Other Community Spaces
Patio/Porch/Balcony
Pools and Related Structures
Restroom
Storage
Trash Collection Areas

*AREA: Health and Safety*

Items

Air Quality
Electrical Hazards
Elevator
Emergency/Fire Exits
Fire Escapes
Flammable Materials
Garbage and Debris
Ground Fault Interrupters
Handrails
Hazards
Hot Water Heater
Infestation
Lead Paint
Pools and Related Structures
Smoke Detectors

Dated: June 5, 1998.

**Deborah Vincent,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

**Donald J. LaVoy,**

*Director, Real Estate Assessment Center.*

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# Part VI

# Presidio Trust

**36 CFR Parts 1001, 1002, 1004 and 1005**

**Interim Management of the Presidio; Final Interim Rule**

## PRESIDIO TRUST

## 36 CFR Parts 1001, 1002, 1004 and 1005

**RIN 3212–AA00**

## Interim Management of the Presidio

**AGENCY:** The Presidio Trust.

**ACTION:** Final interim rule; request for comment.

**SUMMARY:** The Presidio Trust (Trust) was created by Congress in 1996 to manage most of the former U.S. Army base known as the Presidio, in San Francisco, California. The Presidio is currently under the administrative jurisdiction of the National Park Service (NPS), Department of the Interior (DOI). Pursuant to law, administrative jurisdiction of approximately 80 percent of this property will be transferred to the Trust on July 1, 1998. This rulemaking adopts the basic requirements for management of this property as a final interim rule. Public comment is invited on this interim rule. In addition, the Trust intends to publish a notice of proposed rulemaking containing more extensive and revised regulations for management of the area it will administer. Comments on this interim rule, as well as on the proposed rule, will be considered by the Trust in promulgating its final rule.

**DATES:** This interim rule is effective as of June 30, 1998. Comments on this rulemaking must be received by August 31, 1998.

**ADDRESSES:** Written comments on this rule must be sent to James E. Meadows, Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

**FOR FURTHER INFORMATION CONTACT:** James E. Meadows, Executive Director, The Presidio Trust, 10 Funston Avenue, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

**SUPPLEMENTARY INFORMATION:**

## Background

### *I. Introduction*

The Presidio Trust is a wholly-owned government corporation created pursuant to Title I of the Omnibus Parks and Public Lands Management Act of 1996, 16 U.S.C. Sec. 460bb note, Public Law 104–333, 110 Stat. 4097 (the Trust Act). Pursuant to sec. 103(b) of the Trust Act, the Secretary of the U.S. Department of the Interior is to transfer administrative jurisdiction to the Trust of all of Area B of the former Presidio Army Base, as shown on the map referenced in the statute, within one year of the first meeting of the Trust's Board of Directors (Board), which was held on July 9, 1997. In order to facilitate planning, budgeting and other administrative functions, the Trust has requested, and the Secretary of the Interior has agreed, that such property will be transferred to the Trust's administrative jurisdiction on July 1, 1998. Notice of such transfer was published in the **Federal Register** on June 12, 1998 (63 FR 32236).

Section 104(j) of the Trust Act authorizes the Trust, ''in consultation with the Secretary [of the U.S. Department of the Interior], to adopt and to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities'' under the Trust Act. The regulations contained in this document cover such matters for the Presidio as resource protection, public use and recreation; vehicles and traffic safety; and commercial and private operations.

Prior to promulgating these final interim regulations, the Trust consulted with the Secretary of the Interior, who serves on the Trust's Board of Directors pursuant to sec. 103(c)(1)(A) of the Trust Act, as well as with officials of the Department of the Interior, the National Park Service and the U.S. Park Police designated by the Secretary of the Interior to facilitate such consultation. The Trust anticipates that such consultation will continue during the comment period on these final interim regulations and the comment period on the more extensive and revised regulations which the Trust intends to propose in the future.

The regulations contained in this document are being promulgated as final interim regulations without a notice and comment period pursuant to 5 U.S.C. 553(a)(2) (Administrative Procedure Act exemption for matters relating to public property); 5 U.S.C. 553(d)(3) (Administrative Procedure Act exemption upon finding of good cause); and sec. 104(j) of the Trust Act (providing that the ''Trust shall give notice of the adoption of such rules and regulations by publication in the **Federal Register**''). The Trust is promulgating the regulations contained in this document as final interim regulations in order to provide immediately for public safety, good order and efficient management of the property to be transferred to the Trust's jurisdiction. In light of these immediate needs, the deadline imposed by statute for transfer of administrative jurisdiction of the property, the impracticability of providing for public comment on these regulations before they must be in effect, and the cited authorities, the Trust has found good cause under 5 U.S.C. 553(d)(3) for promulgating these final interim regulations without a notice and comment period.

The Trust is simultaneously providing for a public comment period of 60 days on these regulations. In addition, the Trust intends to publish a notice of proposed rulemaking containing more extensive and revised regulations for management of the property it will administer. Comments on this final interim rule, as well as on the proposed rule, will be considered by the Trust in promulgating its final rule. That promulgation will include a discussion of any comments received and any amendments made to these final interim regulations and the proposed regulations as a result of the comments. All comments received, including names and addresses, when provided, will be placed in the public record and made available for public inspection and copying.

### *II. General Principles of this Rulemaking*

These final interim regulations are designed to deviate as little as necessary from the current regulations for the Presidio, which have served the public well during the approximately four-year period in which the NPS has had administrative jurisdiction of the entire Presidio. These final interim regulations are intended to serve the needs of the public during this period of transition from the NPS to the Trust for approximately 80 percent of the Presidio.

The primary regulations that have governed conduct in the Presidio for the past four years are found at 36 CFR parts 1, 2, 4, 5, and 36 CFR 7.97. These are NPS regulations applicable generally to units of the National Park system (36 CFR parts 1, 2, 4 and 5) and written specifically for the Golden Gate National Recreation Area (36 CFR 7.97). The Presidio is located within the boundaries of the Golden Gate National Recreation Area (GGNRA). Although the Trust intends to promulgate additional regulations concerning other topics, as well as more extensively revised regulations on these topics, the Trust is promulgating the regulations in this document in their present form because the conduct covered by the existing NPS regulations is of central concern to the Trust as it assumes administrative jurisdiction of Area B of the Presidio.

The Trust prepared the regulations in this document using these existing NPS regulations as a template. As these regulations were reviewed and

modified, the Trust deviated from these templates only so far as necessary to clarify issues, correct minor errors, and conform to current style standards for the Code of Federal Regulations. It is likely that the Trust will find it desirable in the future to deviate more significantly from the regulatory approach of the NPS or the DOI, particularly to promote clarity and remove provisions that are unnecessary for management of the area to be administered by the Trust. Nevertheless, for purposes of the immediate management of this area, the Trust is maintaining, to the extent possible, the regulatory status quo in both substance and structure. The section-by-section analysis provided below explains in greater detail the minor changes that have been made to the NPS regulations and the reasons for those changes.

Pursuant to sec. 104(i) of the Trust Act, day-to-day law enforcement activities and services in the area to be administered by the Trust will be conducted primarily by the U.S. Park Police, the federal agency that provides professional law enforcement services for units of the National Park system. Other authorized law enforcement agencies will also continue to conduct law enforcement activities and services in the area administered by the Trust.

*III. Revisions Applicable to Multiple Sections*

Certain changes have been required throughout the NPS regulations in order to apply them to the activities of the Trust and its management of the property to be transferred to it. The general changes in terminology are explained in the following chart:

| References in the NPS regulations to the following terms | Have been changed in these regulations to the following terms |
|---|---|
| National Park Service or U.S. Department of the Interior | Presidio Trust. |
| Park, unit of the National Park System, or park area | Area administered by the Presidio Trust, or the boundaries thereof. |
| Superintendent | Board, in the context of a decision of general applicability; or Executive Director, in the context of an administrative or executive decision. |
| Director | Board. |
| Office of the superintendent | Office of the Presidio Trust. |
| The purposes for which a park unit is managed or was established (or similar language). | The purposes of the Presidio Trust Act. |
| General management plans or resource management plans | Policies of the Presidio Trust. |
| Park road | Presidio Trust road. |
| park users | visitors or tenants. |

The Trust has also retained in these regulations an efficient and effective administrative vehicle used by the NPS in managing its many diverse units. For most of these units, including the GGNRA, the NPS has developed a set of policies, procedures, closures and designations known as the GGNRA Superintendent's Compendium. The current GGNRA Superintendent's Compendium is available for public inspection at the address identified above. Prior to the transfer of administrative jurisdiction to the Trust, the Trust will have adopted a similar Compendium of detailed rules, including supporting determinations, in order to allow the Trust to manage flexibly the diverse demands on the Presidio while protecting its natural and cultural resources, fulfilling the purposes of the Trust Act, and responding to changing conditions. Section 1001.7 of these final interim regulations sets out the procedure for the Trust to follow in maintaining the Compendium and making it available to the public.

These final interim regulations reorganize a limited number of the provisions in the NPS regulations in order to place regulations on the same general topic near each other. This was necessary in two instances. First, the NPS has adopted special regulations pertaining to the GGNRA at 36 CFR 7.97. Section 7.97(a) does not apply to the property to be transferred to the Trust and so has not been included in these regulations. Section 7.97(b) concerns powerless flight and has been included in Part 1002 of these regulations with the section covering aircraft as a new § 1002.17(g). Section 7.97(c) concerns use of bicycles and has been included in Part 1004 of these regulations as § 1004.30(b), in place of the NPS regulation at 36 CFR 4.30(b), which authorized the promulgation of this special regulation on bicycles. Other references in the NPS regulations to ''special regulations'' have been deleted as a result of the incorporation of the applicable provisions of 36 CFR 7.97 into these final interim regulations.

The second instance where reorganization was necessary involves regulations concerning boating and water use activities. NPS regulations at 36 CFR part 3 cover these activities, but they are currently prohibited by the GGNRA Superintendent's Compendium in the area to be transferred to the Trust. As a result, these final interim regulations merely incorporate this prohibition into Part 1002 as a new § 1002.63 in order to avoid repromulgating all of 36 CFR Part 3 only to make it inapplicable in the Trust's Compendium.

In several provisions of the NPS regulations, the terms chapter, part and section are used inconsistently. For the sake of clarity, these references have been corrected in these final interim regulations. Similarly, cross-references to various provisions have been revised as appropriate. The numbering system used in the NPS regulations has also been retained insofar as possible, with the addition of ''1000'' to each section number from the regulations in Chapter I (National Park Service, Department of the Interior) that is being carried over, with only minor modifications, to this Chapter X (Presidio Trust). Although this approach leaves gaps in the numbering of these final interim regulations, it is intended to reduce opportunities for confusion during the transition process.

## Section-by-Section Analysis

The following analysis reviews only those sections of the final interim regulations that are not discussed in more general terms above. Because these final interim regulations are modeled on existing regulations of the NPS, this analysis focuses on differences between these regulations and the existing NPS regulations.

*Part 1001 General Provisions*

*Section 1001.2 Applicability and Scope*

Sections 1.2(a)(2) through (a)(5) of the NPS regulations were deleted because the Trust will not be administering any lands covered by these provisions (e.g., pursuant to a written instrument or in which the United States holds an interest in less than fee). Section 1.2(b) of the NPS regulations was deleted because, as discussed above, all of the

lands and waters to be transferred to the administrative jurisdiction of the Trust are federally owned.

*Section 1001.3 Enforcement and Penalties*

Sections 1.3(b) through (d) of the NPS regulations were deleted because they do not apply to the area to be transferred to the administrative jurisdiction of the Trust.

*Section 1001.4 Definitions*

This section was revised to incorporate definitions that are generally applicable to the regulations published today and to delete those definitions that were no longer needed as a result of other differences between the NPS regulations and these final interim regulations.

The terms ''Board'' and ''Executive Director'' were added, along with a provision including their designees in the definition. This is intended to provide senior officials of the Trust with the flexibility to delegate responsibilities and authority as appropriate to carry out the purposes of the Trust Act. The terms ''Director,'' ''Regional Director,'' ''Secretary,'' and ''Superintendent'' were removed since the NPS and DOI will no longer have jurisdiction over the area covered by these final interim regulations following the transfer.

The term ''printed matter'' is defined in this section generally to exclude items of merchandise. This corresponds to the definition of the term used by the NPS in its Special Directive 95–11 interpreting its regulation at 36 CFR 2.52 concerning sale or distribution of printed matter, which is currently applicable to the area to be transferred to the Trust. The Trust believes it is appropriate to incorporate this definition directly into these final interim regulations for the sake of clarity and public notice.

Section 1.4(b) of the NPS regulations was not incorporated into these final interim regulations because, as discussed below, boating and water activities are prohibited in the area to be administered by the Trust.

*Section 1001.10 Symbolic Signs*

Rather than reprint the symbolic signs in 36 CFR 1.10, these have simply been cross-referenced in this section of the final interim regulations.

*Part 1002 Resource Protection, Public Use and Recreation*

*Section 1002.2 Wildlife Protection*

Because hunting and trapping are not permitted under current law in the area to be administered by the Trust, § § 2.2(b), (c) and (f) of the NPS regulations are unnecessary and have been replaced by a provision in these final interim regulations stating that hunting and trapping are prohibited.

*Section 1002.3 Fishing*

Under the GGNRA Superintendent's Compendium, fishing is currently prohibited in the area to be administered by the Trust. As a result, these final interim regulations merely incorporate this prohibition into § 1002.3 in order to avoid repromulgating all of 36 CFR 2.3 only to make it inapplicable in the Trust's Compendium.

*Section 1002.4 Weapons, Traps and Nets*

Section 2.4(a)(2)(ii) of the NPS regulations has been deleted since it refers to areas designated by special regulations and no such special regulations have been issued for the GGNRA on this subject. Section 2.4(d) of the NPS regulations has been deleted because it is not necessary for the Executive Director to have the authority to issue weapons permits in the area to be administered by the Trust.

*Section 1002.5 Research Specimens*

Sections 2.5(d) and (f) of the NPS regulations have been deleted because they are inapplicable to the area to be administered by the Trust. Because the enabling statute for the GGNRA does not expressly prohibit the killing of wildlife, § 2.5(e) of the NPS regulations is the currently applicable provision and has been incorporated into these final interim regulations.

*Section 1002.10 Camping and Food Storage*

The reference to lawfully taken wildlife in § 2.10(b)(6) of the NPS regulations has been deleted because hunting and trapping are prohibited in the area to be transferred to the Trust.

*Section 1002.15 Pets*

Section 2.15(b) of the NPS regulations has been deleted from these final interim regulations because hunting is not allowed in the area to be administered by the Trust.

*Section 1002.17 Aircraft and Air Delivery*

Sections 2.17(a)(1) and (2) of the NPS regulations have been deleted from these regulations because there are no special regulations under which locations for operating or using aircraft have been designated in the area to be administered by the Trust.

*Section 1002.18 Snowmobiles*

Under § 2.18(c) of the NPS regulations, snowmobiles are allowed only on routes and water surfaces designated for such use in special regulations. Because no such special regulations have been issued for the GGNRA on this subject, the remaining provisions of 36 CFR 2.18 governing the use of snowmobiles have no applicability. As a result, these final interim regulations merely state this prohibition in § 1002.18 in order to avoid repromulgating all of 36 CFR 2.18.

*Section 1002.19 Winter Activities*

As a result of the prohibition on snowmobiles, the second sentence of 36 CFR 2.19(b) has not been incorporated into these final interim regulations, since it relates only to activities using snowmobiles.

*Section 1002.23 Recreation Fees*

The National Park Service has established a variety of recreation fees for the GGNRA in accordance with 36 CFR Part 71. This section has been modified to provide that the Trust will charge the same fees for activities in the area under its administrative jurisdiction.

*Section 1002.50 Special Events*

In § 1002.50(a)(3), the reference to unreasonable interference with activities of the National Park Service has been retained, supplemented by a reference to activities of the Trust. Pursuant to sec. 102(c) of the Presidio Trust Act, after the transfer of administrative jurisdiction to the Trust, the National Park Service will continue to be responsible for providing public interpretive services, visitor orientation and educational programs on all lands within the Presidio.

*Section 1002.51 Public Assemblies, Meetings*

Section 2.51(e)(3) has been revised as discussed above in connection with § 1002.50(a)(3).

*Section 1002.52 Sale or Distribution of Printed Matter*

Section 2.52(e)(3) has been revised as discussed above in connection with § § 1002.50(a)(3) and 1002.51(e)(3).

*Part 1004 Vehicles and Traffic Safety*

*Section 1004.10 Travel on Presidio Trust Roads and Designated Routes*

Under § 4.10(b) of the NPS regulations, off-road motor vehicle use is allowed only on routes designated for such use in special regulations. Because no such special regulations have been

issued for the GGNRA on this subject, the remaining provisions of 36 CFR 4.10 governing off-road motor vehicle use have no applicability in the area to be administered by the Trust. As a result, these final interim regulations do not incorporate the last clause of § 4.10(a), § 4.10(b) or § 4.10(c)(3).

*Part 1005 Commercial and Private Operations*

*Section 1005.2—Alcoholic Beverages; Sale of Intoxicants*

The NPS regulations at 36 CFR 5.2(b) do not apply to the GGNRA by their terms. As a result, they have not been incorporated into these final interim regulations.

*Section 1005.3 Business Operations*

The reference in the NPS regulations to specific authorization under special regulations has not been incorporated into these final interim regulations because no special regulations on this subject have been adopted for the GGNRA.

*Section 1005.4 Commercial Passenger-Carrying Motor Vehicles*

By its own terms, 36 CFR 5.4(a) does not apply to the area to be administered by the Trust. Accordingly, this subsection has not been incorporated into these final interim regulations.

*Section 1005.5 Commercial Photography*

This section is adapted from both 36 CFR 5.5 and 43 CFR 5.1. The requirements of 43 CFR 5.1 have been incorporated directly into § 1005.5(a) of these final interim regulations, rather than by cross-reference, in order to improve clarity and allow for clarifying revisions to terminology used in 43 CFR 5.1.

*Section 1005.10 [Reserved]*

Section 5.10 of the NPS regulations (concerning eating, drinking or lodging establishments) applies by its terms only to the following National Parks: Glacier, Lassen Volcanic, Mesa Verde, Mount McKinley, Mount Rainier, Olympic, Rocky Mountain, Sequoia-Kings Canyon, Yellowstone and Yosemite. It therefore does not apply to the GGNRA or to the area administered by the Trust. Accordingly, this section has not been incorporated into these final interim regulations.

**Regulatory Impact**

This rulemaking will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. This rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from this final interim rule. Because this final interim rule is not ''economically significant,'' it is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this final interim rule is not a ''major rule'' under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.*

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final interim rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this final interim rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

This final interim rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities between the Federal Government and the States. In accordance with Executive Order 12612, the Trust has determined that this final interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Environmental Impact*

The Presidio Trust has prepared an Environmental Assessment (EA) in connection with this rulemaking. The EA determined that this rulemaking will not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Presidio in any significant manner.

As a result, the Trust has issued a Finding of No Significant Impact (FONSI) concerning these final interim regulations and has therefore not prepared an Environmental Impact Statement concerning this action. The EA and the FONSI were prepared in accordance with the National Environmental Policy Act of 1969 42 U.S.C. 4321 *et seq.* (NEPA), and regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA, 40 CFR Parts 1500–1508.

Both the EA and the FONSI are available for public inspection at the offices of the Presidio Trust, 10 Funston Avenue, The Presidio, San Francisco, CA 94129, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**Paperwork Reduction Act**

The information collection requirements of these interim regulations, which are specified in § 1001.8, are coextensive with those of the existing NPS regulations, which have previously been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

**Other Applicable Authorities**

The Presidio Trust has drafted and reviewed these final interim regulations in light of Executive Order 12988 and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that order.

**List of Subjects**

*36 CFR Part 1001*

National parks, Penalties, Public lands, Recreation and recreation areas.

*36 CFR Part 1002*

National parks, Public lands, Recreation and recreation areas, Signs and symbols.

*36 CFR Part 1004*

Bicycles, National parks, Public lands, Recreation and recreation areas, Traffic regulations.

*36 CFR Part 1005*

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Pets, Public lands, Recreation and recreation areas, Transportation.

Dated: June 24, 1998.

**James E. Meadows,**

*Executive Director.*

In consideration of the foregoing, the Presidio Trust establishes new Chapter X in Title 36 of the Code of Federal Regulations consisting of Parts 1001, 1002, 1004 and 1005 as set forth below:

CHAPTER X—PRESIDIO TRUST

Part
1001 General provisions
1002 Resource protection, public use and recreation
1004 Vehicles and traffic safety
1005 Commercial and private operations

## PART 1001—GENERAL PROVISIONS

Sec.
1001.1 Purpose.
1001.2 Applicability and scope.
1001.3 Penalties.

1001.4 Definitions.
1001.5 Closures and public use limits.
1001.6 Permits.
1001.7 Public notice.
1001.8 Information collection.
1001.10 Symbolic signs.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1001.1 Purpose.

(a) The regulations in this chapter provide for the proper use, management, government and protection of persons, property and natural and cultural resources within the area under the jurisdiction of the Presidio Trust.

(b) The regulations in this chapter will be utilized to fulfill the statutory purposes of the Presidio Trust Act.

### § 1001.2 Applicability and scope.

(a) The regulations contained in this chapter apply to all persons entering, using, visiting, or otherwise within the boundaries of federally owned lands and waters administered by the Presidio Trust.

(b) The regulations contained in Parts 1002, 1004 and 1005 of this chapter shall not be construed to prohibit administrative activities conducted by the Presidio Trust, or its agents, in accordance with approved policies of the Presidio Trust, or in emergency operations involving threats to life, property, or resources of the area administered by the Presidio Trust.

(c) The regulations in this chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations.

### § 1001.3 Penalties.

A person convicted of violating a provision of the regulations contained in Parts 1001, 1002, 1004 and 1005 of this chapter, within the area administered by the Presidio Trust, shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

### § 1001.4 Definitions.

The following definitions shall apply to this chapter, unless modified by the definitions for a specific part or regulation:

*Abandonment* means the voluntary relinquishment of property with no intent to retain possession.

*Administrative activities* means those activities conducted under the authority of the Presidio Trust for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with the regulations in this chapter, or repairing or maintaining government facilities.

*Airboat* means a vessel that is supported by the buoyancy of its hull and powered by a propeller or fan above the waterline. This definition should not be construed to mean a ''hovercraft,'' that is supported by a fan-generated air cushion.

*Aircraft* means a device that is used or intended to be used for human flight in the air, including powerless flight.

*Archeological resource* means material remains of past human life or activities that are of archeological interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

*Authorized emergency vehicle* means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by State law.

*Authorized person* means an employee or agent of the Presidio Trust with delegated authority to enforce the provisions of this chapter.

*Bicycle* means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

*Board* means the Board of Directors of the Presidio Trust or its designee.

*Boundary* means the limits of lands or waters administered by the Presidio Trust as specified by Congress, or denoted by presidential proclamation, or recorded in the records of a state or political subdivision in accordance with applicable law, or published pursuant to law, or otherwise published or posted by the Presidio Trust.

*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

*Carry* means to wear, bear, or have on or about the person.

*Controlled substance* means a drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) or a drug or substance added to these schedules pursuant to the terms of the Act.

*Cultural resource* means material remains of past human life or activities that are of significant cultural interest and are less than 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

*Developed area* means roads, parking areas, picnic areas, campgrounds, or other structures, facilities or lands located within development and historic zones depicted on the land management and use map for the area administered by the Presidio Trust.

*Downed aircraft* means an aircraft that cannot become airborne as a result of mechanical failure, fire, or accident.

*Executive Director* means the Executive Director of the Presidio Trust or his or her designee.

*Firearm* means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

*Fish* means any member of the subclasses Agnatha, Chondrichthyes, or Osteichthyes, or any mollusk or crustacean found in salt water.

*Fishing* means taking or attempting to take fish.

*Hunting* means taking or attempting to take wildlife, except trapping.

*Legislative jurisdiction* means lands and waters under the exclusive or concurrent jurisdiction of the United States.

*Manual wheelchair* means a device that is propelled by human power, designed for and used by a mobility-impaired person.

*Motor vehicle* means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair.

*Motorcycle* means every motor vehicle having a seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

*Motorized wheelchair* means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

*Net* means a seine, weir, net wire, fish trap, or other implement designed to

entrap fish, except a hand-held landing net used to retrieve fish taken by hook and line.

*Nondeveloped area* means all lands and waters within the area administered by the Presidio Trust other than developed areas.

*Operator* means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

*Pack animal* means horses, burros, mules or other hoofed mammals when designated as pack animals by the Executive Director.

*Permit* means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

*Person* means an individual, firm, corporation, society, association, partnership, or private or public body.

*Pet* means a dog, cat or any animal that has been domesticated.

*Possession* means exercising direct physical control or dominion, with or without ownership, over property, or archeological, cultural or natural resources.

*Practitioner* means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by the United States or the jurisdiction in which such person practices to distribute or possess a controlled substance in the course of professional practice.

*Presidio Trust* and *Trust* mean the wholly-owned federal government corporation created by the Presidio Trust Act.

*Presidio Trust Act* means Title I of Public Law 104–333, 110 Stat. 4097, as the same may be amended.

*Presidio Trust road* means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the Presidio Trust.

*Printed matter* means message-bearing textual printed material such as books, pamphlets, magazines and leaflets and does not include other forms of merchandise, such as posters, coffee mugs, sunglasses, audio or videotapes, T-shirts, hats, ties, shorts and other clothing articles.

*Public use limit* means the number of persons; number and type of animals; amount, size and type of equipment, vessels, mechanical modes of conveyance, or food/beverage containers allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

*Refuse* means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid waste, or other discarded materials.

*Services* means, but is not limited to, meals and lodging, labor, professional services, transportation, admission to exhibits, use of telephone or other utilities, or any act for which payment is customarily received.

*Smoking* means the carrying of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

*Snowmobile* means a self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by a ski or skis in contact with the snow.

*State* means a State, territory, or possession of the United States.

*State law* means the applicable and nonconflicting laws, statutes, regulations, ordinances, infractions and codes of the State(s) and political subdivision(s) within whose exterior boundaries the area administered by the Presidio Trust or a portion thereof is located.

*Take* or *taking* means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the aforementioned.

*Traffic* means pedestrians, ridden or herded animals, vehicles and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for purpose of travel.

*Traffic control device* means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Executive Director for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

*Trap* means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

*Trapping* means taking or attempting to take wildlife with a trap.

*Underway* means when a vessel is not at anchor, moored, made fast to the shore or docking facility, or aground.

*Unloaded*, as applied to weapons and firearms, means that:

(1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm;

(2) A muzzle-loading weapon does not contain gun powder in the pan, or the percussion cap is not in place; and

(3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

*Vehicle* means every device in, upon, or by which a person or property is or may be transported or drawn on land, except snowmobiles and devices moved by human power or used exclusively upon stationary rails or track.

*Vessel* means every type or description of craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, including a buoyant device permitting or capable of free flotation.

*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes a weapon the possession of which is prohibited under the laws of the State in which the area administered by the Presidio Trust or portion thereof is located.

*Wildlife* means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

**§ 1001.5 Closures and public use limits.**

(a) Consistent with applicable legislation and Federal administrative policies, and based upon a determination that such action is necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the Board may:

(1) Establish, for all or a portion of the area administered by the Presidio Trust, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of the area administered by the Presidio Trust to all public use or to a specific use or activity.

(2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.

(3) Terminate a restriction, limit, closure, designation, condition, or visiting hour restriction imposed under paragraph (a)(1) or (2) of this section.

(b) Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration

in the public use pattern of the area administered by the Presidio Trust, adversely affect the natural, aesthetic, scenic or cultural values of the area administered by the Presidio Trust, require a long-term or significant modification in the resource management objectives of the area administered by the Presidio Trust, or is of a highly controversial nature, shall be published as rulemaking in the **Federal Register**.

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the Board shall prepare a written determination justifying the action. That determination shall set forth the reason(s) the restriction, condition, public use limit or closure authorized by paragraph (a) of this section has been established, and an explanation of why less restrictive measures will not suffice, or in the case of a termination of a restriction, condition, public use limit or closure previously established under paragraph (a) of this section, a determination as to why the restriction is no longer necessary and a finding that the termination will not adversely impact resources of the area administered by the Presidio Trust. This determination shall be available to the public upon request.

(d) To implement a public use limit, the Board may establish a permit, registration, or reservation system. Permits shall be issued in accordance with the criteria and procedures of § 1001.6.

(e) Except in emergency situations, the public will be informed of closures, designations, and use or activity restrictions or conditions, visiting hours, public use limits, public use limit procedures, and the termination or relaxation of such, in accordance with § 1001.7.

(f) Violating a closure, designation, use or activity restriction or condition, schedule of visiting hours, or public use limit is prohibited.

### § 1001.6 Permits.

(a) When authorized by regulations set forth in this chapter, the Executive Director may issue a permit to authorize an otherwise prohibited or restricted activity or impose a public use limit. The activity authorized by a permit shall be consistent with applicable legislation, Federal regulations and administrative policies, and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor use activities will not be adversely impacted.

(b) Except as otherwise provided, application for a permit shall be submitted to the Executive Director during normal business hours.

(c) The public will be informed of the existence of a permit requirement in accordance with § 1001.7.

(d) Unless otherwise provided for by the regulations in this chapter, the Executive Director shall deny a permit that has been properly applied for only upon a determination that the designated capacity for an area or facility would be exceeded; or that one or more of the factors set forth in paragraph (a) of this section would be adversely impacted. The basis for denial shall be provided to the applicant upon request.

(e) The Executive Director shall include in a permit the terms and conditions that the Executive Director deems necessary to protect resources of the area administered by the Presidio Trust or public safety and may also include terms or conditions established pursuant to the authority of any other section of this chapter.

(f) A compilation of those activities requiring a permit shall be maintained by the Executive Director and available to the public upon request.

(g) The following are prohibited:

(1) Engaging in an activity subject to a permit requirement imposed pursuant to this section without obtaining a permit; or

(2) Violating a term or condition of a permit issued pursuant to this section.

(h) Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the Executive Director.

### § 1001.7 Public notice.

(a) Whenever the authority of § 1001.5(a) is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of the area administered by the Presidio Trust as open or closed, or to require a permit to implement a public use limit, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the affected locale.

(2) Maps available in the office of the Presidio Trust and other places convenient to the public.

(3) Publication in a newspaper of general circulation in the affected area.

(4) Other appropriate methods, such as the removal of closure signs, use of electronic media, brochures, maps and handouts.

(b) In addition to the above-described notification procedures, the Board shall compile in writing all the designations, closures, permit requirements and other restrictions imposed under discretionary authority. This compilation shall be updated annually and made available to the public upon request.

### § 1001.8 Information collection.

The information collection requirements contained in 36 CFR 1001.5, 1002.5, 1002.10, 1002.12, 1002.17, 1002.33, 1002.38, 1002.50, 1002.51, 1002.52, 1002.60, 1002.61, 1002.62, 1004.4 and 1004.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to provide the Executive Director data necessary to issue permits for special uses of the area administered by the Presidio Trust and to obtain notification of accidents that occur within the area administered by the Presidio Trust. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In 36 CFR 1002.33 and 1004.4, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

### § 1001.10 Symbolic signs.

(a) The signs pictured in 36 CFR 1.10 provide general information and regulatory guidance in the area administered by the Presidio Trust. Certain of the signs designate activities that are either allowed or prohibited. Activities symbolized by a sign bearing a slash mark are prohibited.

(b) The use of other types of signs not herein depicted is not precluded.

## PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Sec.

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**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1002.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into an ecosystem within the area administered by the Presidio Trust.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the area administered by the Presidio Trust: Provided, however, that the Board may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the area administered by the Presidio Trust.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the Board.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler. This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in the area administered by the Presidio Trust.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The Board may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to § § 1001.5 and 1001.7 of this chapter. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The Board may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect wildlife, the reproductive potential of a plant species, or otherwise adversely affect the resources of the area administered by the Presidio Trust.

(2) The Board may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the area administered by the Presidio Trust.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the Board.

(iii) Unauthorized removal of natural products from the area administered by the Presidio Trust.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 1002.2 or § 1002.3.

### § 1002.2 Wildlife protection.

(a) The following are prohibited:

(1) The taking of wildlife.

(2) The feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or other activities.

(3) Possessing unlawfully taken wildlife or portions thereof.

(b) *Hunting and trapping.* Hunting and trapping are prohibited within the area administered by the Presidio Trust.

(c) The Board may establish conditions and procedures for transporting lawfully taken wildlife through the area administered by the Presidio Trust. Violation of these conditions and procedures is prohibited.

(d) The Board may designate all or portions of the area administered by the Presidio Trust as closed to the viewing of wildlife with an artificial light. Use of an artificial light for purposes of viewing wildlife in closed areas is prohibited.

(e) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

### § 1002.3 Fishing.

Fishing is prohibited within the area administered by the Presidio Trust.

### § 1002.4 Weapons, traps and nets.

(a)(1) Except as otherwise provided in this section, the following are prohibited:

(i) Possessing a weapon, trap or net.

(ii) Carrying a weapon, trap or net.

(iii) Using a weapon, trap or net.

(2) Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in the area administered by the Presidio Trust where:

(A) The taking of wildlife is authorized by law in accordance with § 1002.2;

(B) The taking of fish is authorized by law in accordance with § 1002.3.

(ii) Within a residential dwelling. For purposes of this paragraph only, the term ''residential dwelling'' means a fixed housing structure which is either the principal residence of its occupants, or is occupied on a regular and recurring basis by its occupants as an alternate residence or vacation home.

(3) Traps, nets and unloaded weapons may be possessed within a temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.

(b) Carrying or possessing a loaded weapon in a motor vehicle, vessel or other mode of transportation is prohibited, except that carrying or possessing a loaded weapon in a vessel is allowed when such vessel is not being propelled by machinery and is used as a shooting platform in accordance with Federal and State law.

(c) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(d) Authorized Federal, State and local law enforcement officers may carry firearms in the performance of their official duties.

(e) The carrying or possessing of a weapon, trap or net in violation of applicable Federal and State laws is prohibited.

(f) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.5 Research specimens.**

(a) Taking plants, fish, wildlife, rocks or minerals except in accordance with other regulations of this chapter or pursuant to the terms and conditions of a specimen collection permit, is prohibited.

(b) A specimen collection permit may be issued only to an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the Executive Director determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies. A permit shall not be issued if removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the area administered by the Presidio Trust.

(c) A permit to take an endangered or threatened species listed pursuant to the Endangered Species Act, or similarly identified by the States, shall not be issued unless the species cannot be obtained outside of the area administered by the Presidio Trust and the primary purpose of the collection is to enhance the protection or management of the species.

(d) A permit authorizing the killing of plants, fish or wildlife may be issued only when the Executive Director approves a written research proposal and determines that the collection will not be inconsistent with the purposes of the Presidio Trust Act and has the potential for conserving and perpetuating the species subject to collection.

(e) Specimen collection permits shall contain the following conditions:

(1) Specimens placed in displays or collections will bear official National Park Service museum labels and their catalog numbers will be registered in the National Park Service National Catalog.

(2) Specimens and data derived from consumed specimens will be made available to the public and reports and publications resulting from a research specimen collection permit shall be filed with the Executive Director.

(f) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

**§ 1002.10 Camping and food storage.**

(a) The Board may require permits, designate sites or areas, and establish conditions for camping.

(b) The following are prohibited:

(1) Digging or leveling the ground at a campsite.

(2) Leaving camping equipment, site alterations, or refuse after departing from the campsite.

(3) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.

(4) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on visitors or tenants, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(5) The installation of permanent camping facilities.

(6) Displaying wildlife carcasses or other remains or parts thereof.

(7) Connecting to a utility system, except as designated.

(8) Failing to obtain a permit, where required.

(9) Violating conditions which may be established by the Board.

(10) Camping outside of designated sites or areas.

(c) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(d) *Food storage.* The Board may designate all or a portion of the area administered by the Presidio Trust where food, lawfully taken fish or wildlife, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material, or suspended at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk, or other object, or shall be stored as otherwise designated. Violation of this restriction is prohibited. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

**§ 1002.11 Picnicking.**

Picnicking is allowed, except in designated areas closed in accordance with § 1001.5 of this chapter. The Board may establish conditions for picnicking in areas where picnicking is allowed. Picnicking in violation of established conditions is prohibited.

**§ 1002.12 Audio disturbances.**

(a) The following are prohibited:

(1) Operating motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or an audio device, such as a radio, television set, tape deck or musical instrument, in a manner that exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet; or that, if below that level, nevertheless makes noise which is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, purposes of the Presidio Trust Act, impact on visitors or tenants, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(2) In developed areas, operating a power saw, except pursuant to the terms and conditions of a permit.

(3) In nondeveloped areas, operating any type of portable motor or engine, or device powered by a portable motor or engine, except pursuant to the terms and conditions of a permit.

(4) Operating a public address system, except in connection with a public gathering or special event for which a permit has been issued pursuant to § 1002.50 or § 1002.51.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

**§ 1002.13 Fires.**

(a) The following are prohibited:

(1) Lighting or maintaining a fire, except in designated areas or receptacles and under conditions that may be established by the Board.

(2) Using stoves or lanterns in violation of established restrictions.

(3) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to, or results in the burning of property, real property or resources of the area administered by the Presidio Trust, or creates a public safety hazard.

(4) Leaving a fire unattended.

(5) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or resources of the area administered by the Presidio Trust, or creates a public safety hazard.

(b) Fires shall be extinguished upon termination of use and in accordance with such conditions as may be established by the Board. Violation of these conditions is prohibited.

(c) During periods of high fire danger, the Executive Director may close all or a portion of the area administered by the Presidio Trust to the lighting or maintaining of a fire.

(d) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.14 Sanitation and refuse.**

(a) The following are prohibited:

(1) Disposing of refuse in other than refuse receptacles.

(2) Using government refuse receptacles or other refuse facilities for dumping household, commercial, or industrial refuse, brought as such from private or municipal property, except in accordance with conditions established by the Executive Director.

(3) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(4) Draining refuse from a trailer or other vehicle, except in facilities provided for such purpose.

(5) Bathing, or washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those designated for such purpose.

(6) Polluting or contaminating waters or water courses within the area administered by the Presidio Trust.

(7) Disposing of fish remains on land, or in waters within 200 feet of boat docks or designated swimming beaches, or within developed areas, except as otherwise designated.

(8) In developed areas, the disposal of human body waste, except at designated locations or in fixtures provided for that purpose.

(9) In nondeveloped areas, the disposal of human body waste within 100 feet of a water source, high water mark of a body of water, or a campsite, or within sight of a trail, except as otherwise designated.

(b) The Board may establish conditions concerning the disposal, containerization, or carryout of human body waste. Violation of these conditions is prohibited.

**§ 1002.15 Pets.**

(a) The following are prohibited:

(1) Possessing a pet in a public building, public transportation vehicle, or location designated as a swimming beach, or any structure or area closed to the possession of pets by the Board. This paragraph shall not apply to guide dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing-impaired persons.

(2) Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times.

(3) Leaving a pet unattended and tied to an object, except in designated areas or under conditions which may be established by the Board.

(4) Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on visitors or tenants, and other relevant factors, or that frightens wildlife by barking, howling, or making other noise.

(5) Failing to comply with pet excrement disposal conditions which may be established by the Board.

(b) Pets or feral animals that are running-at-large and observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other resources of the area administered by the Presidio Trust.

(c) Pets running-at-large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(d) Pets may be kept by residents of the area administered by the Presidio Trust consistent with the provisions of this section and in accordance with conditions which may be established by the Board. Violation of these conditions is prohibited.

(e) This section does not apply to dogs used by authorized Federal, State and local law enforcement officers in the performance of their official duties.

**§ 1002.16 Horses and pack animals.**

The following are prohibited:

(a) The use of animals other than those designated as ''pack animals'' for purposes of transporting equipment.

(b) The use of horses or pack animals outside of trails, routes or areas designated for their use.

(c) The use of horses or pack animals on a Presidio Trust road, except where such travel is necessary to cross to or from designated trails, or areas, or privately owned property, and no alternative trails or routes have been designated; or when the road has been closed to motor vehicles.

(d) Free-trailing or loose-herding of horses or pack animals on trails, except as designated.

(e) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(f) Obstructing a trail, or making an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(g) Violation of conditions which may be established by the Board concerning the use of horses or pack animals.

**§ 1002.17 Aircraft and air delivery.**

(a) Delivering or retrieving a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit, is prohibited.

(b) The provisions of this section, other than paragraph (c) of this section, shall not be applicable to official business of the Federal government, or emergency rescues in accordance with the directions of the Executive Director, or to landings due to circumstances beyond the control of the operator.

(c)(1) Except as provided in paragraph (c)(3) of this section, the owners of a downed aircraft shall remove the aircraft and all component parts thereof in accordance with procedures established by the Executive Director. In establishing removal procedures, the Executive Director is authorized to establish a reasonable date by which aircraft removal operations must be complete; determine times and means of access to and from the downed aircraft; and specify the manner or method of removal.

(2) Failure to comply with procedures and conditions established under paragraph (c)(1) of this section is prohibited.

(3) The Executive Director may waive the requirements of paragraph (c)(1) of this section or prohibit the removal of downed aircraft, upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life; the removal of a downed aircraft would result in extensive resource damage; or the removal of a downed aircraft is impracticable or impossible.

(d) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration as found in 14 CFR chapter I.

(e) The operation or use of hovercraft is prohibited.

(f) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(g) The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the Board, pursuant to the terms and conditions of a permit.

**§ 1002.18 Snowmobiles.**

The use of snowmobiles is prohibited.

**§ 1002.19 Winter activities.**

(a) Skiing, snowshoeing, ice skating, sledding, innertubing, tobogganing and similar winter sports are prohibited on Presidio Trust roads and in parking areas open to motor vehicle traffic, except as otherwise designated.

(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes.

(c) Failure to abide by area designations or activity restrictions established under this section is prohibited.

**§ 1002.20 Skating, skateboards and similar devices.**

Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices is prohibited, except in designated areas.

**§ 1002.21 Smoking.**

(a) The Board may designate a portion of the area administered by the Presidio Trust, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Sng visitor use activities. Smoking in an area or location so designated is prohibited.

(b) Smoking is prohibited within all caves and caverns.

**§ 1002.22 Property.**

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for longer than 24 hours, except in locations where longer time periods have been designated or in accordance with coBoard.

(3) Failing to turn in found property to the Executive Director as soon as practicable.

(b) *Impoundment of property*. (1) Property determined to be left unattended in excess of an allowed period of time may be impounded by the Executive Director.

(2) Unattended property that interferes with visitor safety or orderly management of the area administered by the Presidio Trust, or that presents a threat to resources of the area administered by the Presidio Trust may be impounded by the Executive Director at any time.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard personal property.

(4) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section; or the Executive Director may assess the owner reasonable fees for the impoundment and storage of property impounded pursuant to this section.

(c) *Disposition of property*. (1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60-day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the Executive Director's custody, if the owner cannot be identified.

(2) Unclaimed, found property shall be stored for a minimum period of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the Presidio Trust. Found property not claimed by the owner or an authorized representative or the finder shall be deemed abandoned.

(3) Abandoned property shall be disposed of in accordance with law.

(4) Property, including real property, located within the area administered by the Presidio Trust and owned by a deceased person, shall be disposed of in accordance with the laws of the State within whose exterior boundaries the property is located.

(d) The regulations contained in paragraphs (a)(2), (b) and (c) of this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.23 Recreation fees.**

(a) Recreation fees shall be charged in the area administered by the Presidio Trust to the same extent that recreation fees have been established for the Golden Gate National Recreation Area in accordance with 36 CFR part 71.

(b) Entering designated entrance fee areas or using specialized sites, facilities, equipment or services, or participating in group activities, recreation events, or other specialized recreation uses for which recreation fees have been established without paying the required fees and possessing the applicable permits is prohibited. Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(c) The Executive Director may, when in the public interest, prescribe periods during which the collection of recreation fees shall be suspended.

**§ 1002.30 Misappropriation of property and services.**

(a) The following are prohibited:

(1) Obtaining or exercising unlawful possession over the property of another with the purpose to deprive the owner of the property.

(2) Obtaining property or services offered for sale or compensation without making payment or offering to pay.

(3) Obtaining property or services offered for sale or compensation by means of deception or a statement of past, present or future fact that is instrumental in causing the wrongful transfer of property or services, or using stolen, forged, expired, revoked or fraudulently obtained credit cards or paying with negotiable paper on which payment is refused.

(4) Concealing unpurchased merchandise on or about the person without the knowledge or consent of the seller or paying less than purchase price by deception.

(5) Acquiring or possessing the property of another, with knowledge or reason to believe that the property is stolen.

(b) The regulations contained in this section apply, regardless of land

ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.31 Trespassing, tampering and vandalism.**

(a) The following are prohibited:

(1) *Trespassing.* Trespassing, entering or remaining in or upon property or real property not open to the public, except with the express invitation or consent of the person having lawful control of the property or real property.

(2) *Tampering.* Tampering or attempting to tamper with property or real property, or moving, manipulating or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(3) *Vandalism.* Destroying, injuring, defacing, or damaging property or real property.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.32 Interfering with agency functions.**

(a) The following are prohibited:

(1) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(2) *Lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals that pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or resources of the area administered by the Presidio Trust, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

(3) *False information.* Knowingly giving a false or fictitious report or other false information to an authorized person investigating an accident or violation of law or regulation, or on an application for a permit.

(4) *False Report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.33 Report of injury or damage.**

(a) A person involved in an incident resulting in personal injury or property damage exceeding $300, other than an accident reportable under § 1004.4 of this chapter, shall report the incident to the Executive Director as soon as possible. This notification does not satisfy reporting requirements imposed by applicable State law.

(b) Failure to report an incident in accordance with paragraph (a) of this section is prohibited.

**§ 1002.34 Disorderly conduct.**

(a) A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(1) Engages in fighting or threatening, or in violent behavior.

(2) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(3) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(4) Creates or maintains a hazardous or physically offensive condition.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.35 Alcoholic beverages and controlled substances.**

(a) *Alcoholic beverages.* (1) The use and possession of alcoholic beverages within the area administered by the Presidio Trust is allowed in accordance with the provisions of this section.

(2) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age limit will apply for purposes of this paragraph.

(ii) The possession of an alcoholic beverage by a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age will apply for purposes of this paragraph.

(3)(i) The Board may close all or a portion of a public use area or public facility within the area administered by the Presidio Trust to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open, or that has been opened, or whose seal is broken or the contents of which have been partially removed. Provided however, that such a closure may only be implemented following a determination made by the Board that:

(A) The consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(B) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and § § 1001.5 and 1002.34 of this chapter, over a reasonable time period, does not alleviate the problem.

(ii) A closure imposed by the Board does not apply to an open container of an alcoholic beverage that is stored in compliance with the provisions of § 1004.14 of this chapter.

(iii) Violating a closure imposed pursuant to this section is prohibited.

(b) *Controlled substances.* The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

(c) Presence within the area administered by the Presidio Trust when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or resources of the

area administered by the Presidio Trust, is prohibited.

**§ 1002.36 Gambling.**

(a) Gambling in any form, or the operation of gambling devices, is prohibited.

(b) This regulation applies, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1002.37 Noncommercial soliciting.**

Soliciting or demanding gifts, money, goods or services is prohibited, except pursuant to the terms and conditions of a permit that has been issued under § 1002.50, § 1002.51 or § 1002.52.

**§ 1002.38 Explosives.**

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State laws.

(b) Using or possessing fireworks and firecrackers is prohibited, except pursuant to the terms and conditions of a permit or in designated areas under such conditions as the Board may establish, and in accordance with applicable State law.

(c) Violation of the conditions established by the Board or of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

**§ 1002.50 Special events.**

(a) Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events are allowed: Provided, however, There is a meaningful association between the area administered by the Presidio Trust and the events, and the observance contributes to visitor understanding of the significance of the area administered by the Presidio Trust, and a permit therefore has been issued by the Executive Director. A permit shall be denied if such activities would:

(1) Cause injury or damage to resources of the area administered by the Presidio Trust; or

(2) Be contrary to the purposes of the Presidio Trust Act; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the Executive Director. The application shall be submitted so as to reach the Executive Director at least 72 hours in advance of the proposed event.

(c) As a condition of permit issuance, the Executive Director may require:

(1) The filing of a bond payable to the Presidio Trust, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the United States is named as co-insured in an amount sufficient to protect the United States.

(d) The permit may contain such conditions as are reasonably consistent with protection and use of the area administered by the Presidio Trust for the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

**§ 1002.51 Public assemblies, meetings.**

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within the area administered by the Presidio Trust, provided a permit therefore has been issued by the Executive Director.

(b) An application for such a permit shall set forth the name of the applicant; the date, time, duration, nature and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to resources or facilities of the area administered by the Presidio Trust, impairment of a protected area's atmosphere of peace and tranquillity, interference with program activities, or impairment of public use facilities.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate on a map, that shall be available in the office of the Presidio Trust, the locations available for public assemblies. Locations may be designated as not available only if such activities would:

(1) Cause injury or damage to resources of the area administered by the Presidio Trust; or

(2) Unreasonably impair the atmosphere of peace and tranquillity maintained in wilderness, natural, historic or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the area administered by the Presidio Trust for the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of 7 days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in activities covered under this section to obstruct or impede

pedestrians or vehicles, or harass visitors with physical contact.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

**§ 1002.52 Sale or distribution of printed matter.**

(a) The sale or distribution of printed matter is allowed within the area administered by the Presidio Trust, provided that a permit to do so has been issued by the Executive Director, and provided further that the printed matter is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant; the name of the organization (if any); the date, time, duration, and location of the proposed sale or distribution; the number of participants; and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to resources or facilities of the area administered by the Presidio Trust, impairment of a protected area's atmosphere of peace and tranquillity, interference with program activities, or impairment of public use facilities; or

(4) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate on a map, which shall be available for inspection in the office of the Presidio Trust, the locations within the area administered by the Presidio Trust that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to resources of the area administered by the Presidio Trust; or

(2) Unreasonably impair the atmosphere of peace and tranquillity maintained in wilderness, natural, historic, or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust concessioners or contractors; or

(5) Present a clear and present damage to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the area administered by the Presidio Trust for the purposes of the Presidio Trust Act.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in the sale or distribution of printed matter under this section to obstruct or impede pedestrians or vehicles, harass visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

**§ 1002.60 Livestock use and agriculture.**

(a) The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind within the area administered by the Presidio Trust or the use of such area for agricultural purposes is prohibited, except:

(1) As specifically authorized by Federal statutory law; or

(2) As required under a reservation of use rights arising from acquisition of a tract of land; or

(3) As designated, when conducted as a necessary and integral part of a recreational activity or required in order to maintain a historic scene.

(b) Activities authorized pursuant to any of the exceptions provided for in paragraph (a) of this section shall be allowed only pursuant to the terms and conditions of a license, permit or lease. Violation of the terms and conditions of a license, permit or lease issued in accordance with this paragraph is prohibited and may result in the suspension or revocation of the license, permit, or lease.

(c) *Impounding of livestock.* (1) Livestock trespassing within the area administered by the Presidio Trust may be impounded by the Executive Director and, if not claimed by the owner within the periods specified in this paragraph, shall be disposed of in accordance with applicable Federal and State law.

(2) In the absence of applicable Federal or State law, the livestock shall be disposed of in the following manner:

(i) If the owner is known, prompt written notice of impoundment will be served, and in the event of the owner's failure to remove the impounded livestock within five (5) days from delivery of such notice, it will be disposed of in accordance with this paragraph.

(ii) If the owner is unknown, disposal of the livestock shall not be made until at least fifteen (15) days have elapsed from the date that a notice of impoundment is originally published in a newspaper of general circulation in the county in which the trespass occurs or, if no such newspaper exists, notification is provided by other appropriate means.

(iii) The owner may redeem the livestock by submitting proof of ownership and paying all expenses of the United States for capturing, advertising, pasturing, feeding, impounding, and the amount of damage

to public property injured or destroyed as a result of the trespass.

(iv) In determining the claim of the government in a livestock trespass, the value of forage consumed shall be computed at the commercial rates prevailing in the locality for the class of livestock found in trespass. The claim shall include the pro rata salary of employees for the time spent and the expenses incurred as a result of the investigation, reporting, and settlement or prosecution of the claim.

(v) If livestock impounded under this paragraph is offered at public sale and no bid is received, or if the highest bid received is less than the amount of the claim of the United States or of the officer's appraised value of the livestock, whichever is the lesser amount, such livestock, may be sold at private sale for the highest amount obtainable, condemned and destroyed, or converted to the use of the United States.

### § 1002.61 Residing on Federal lands.

(a) Residing within the area administered by the Presidio Trust, other than on privately owned lands, except pursuant to the terms and conditions of a permit, lease or contract, is prohibited.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

### § 1002.62 Memorialization.

(a) The installation of a monument, memorial, tablet, structure, or other commemorative installation within the area administered by the Presidio Trust without the authorization of the Board is prohibited.

(b) The scattering of human ashes from cremation is prohibited, except pursuant to the terms and conditions of a permit, or in designated areas according to conditions which may be established by the Board.

(c) Failure to abide by area designations and established conditions is prohibited.

(d) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

### § 1002.63 Boating and water use activities.

Swimming, boating and the use of any water vessel are prohibited within the area administered by the Presidio Trust.

## PART 1004—VEHICLES AND TRAFFIC SAFETY

Sec.
1004.1 Applicability and scope.
1004.2 State law applicable.
1004.3 Authorized emergency vehicles.
1004.4 Report of motor vehicle accident.
1004.10 Travel on Presidio Trust roads and designated routes.
1004.11 Load, weight and size limits.
1004.12 Traffic control devices.
1004.13 Obstructing traffic.
1004.14 Open container of alcoholic beverage.
1004.15 Safety belts.
1004.20 Right of way.
1004.21 Speed limits.
1004.22 Unsafe operation.
1004.23 Operating under the influence of alcohol or drugs.
1004.30 Bicycles.
1004.31 Hitchhiking.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1004.1 Applicability and scope.

The applicability of the regulations in this part is described in § 1001.2 of this chapter. The regulations in this part also apply, regardless of land ownership, on all roadways and parking areas within the boundaries of the area administered by the Presidio Trust that are open to public traffic and that are under the legislative jurisdiction of the United States.

### § 1004.2 State law applicable.

(a) Unless specifically addressed by regulations in this chapter, traffic and the use of vehicles within the boundaries of the area administered by the Presidio Trust are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

### § 1004.3 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

(1) Disregard traffic control devices;

(2) Exceed the speed limit; and

(3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

### § 1004.4 Report of motor vehicle accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the Executive Director as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the Executive Director.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the Executive Director unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the area administered by the Presidio Trust.

(c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.

(d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

### § 1004.10 Travel on Presidio Trust roads and designated routes.

(a) Operating a motor vehicle is prohibited except on Presidio Trust roads and in parking areas.

(b) The following are prohibited:

(1) Operating a motor vehicle not equipped with pneumatic tires, except that a track-laying motor vehicle or a motor vehicle equipped with a similar traction device may be operated on a route designated for these vehicles by the Board.

(2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a Presidio Trust road or route.

### § 1004.11 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a Presidio Trust road. However, the Board may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The Board may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the Board.

(2) Failing to obtain a permit when required.

(3) Violating a term or condition of a permit.

(4) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

(c) Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the Executive Director.

**§ 1004.12 Traffic control devices.**

Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the Executive Director.

**§ 1004.13 Obstructing traffic.**

The following are prohibited:

(a) Stopping or parking a vehicle upon a Presidio Trust road, except as authorized by the Executive Director, or in the event of an accident or other condition beyond the control of the operator.

(b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

**§ 1004.14 Open container of alcoholic beverage.**

(a) Each person within a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(b) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in the area administered by the Presidio Trust is prohibited.

(c) This section does not apply to:

(1) An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(2) An open container stored in the living quarters of a motor home or camper; or

(3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupant(s) are camping.

(d) For the purpose of paragraph (c)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

**§ 1004.15 Safety belts.**

(a) Each operator and passenger occupying any seating position of a motor vehicle in the area administered by the Presidio Trust will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

**§ 1004.20 Right of way.**

An operator of a motor vehicle shall yield the right of way to pedestrians, saddle and pack animals and vehicles drawn by animals. Failure to yield the right of way is prohibited.

**§ 1004.21 Speed limits.**

(a) Speed limits in the area administered by the Presidio Trust are as follows:

(1) 15 miles per hour: within all school zones, campgrounds, picnic areas, parking areas, utility areas, business or residential areas, other places of public assemblage and at emergency scenes.

(2) 25 miles per hour: upon sections of Presidio Trust road under repair or construction.

(3) 45 miles per hour: upon all other Presidio Trust roads.

(b) The Board may designate a different speed limit upon any Presidio Trust road when a speed limit set forth in paragraph (a) of this section is determined to be unreasonable, unsafe or inconsistent with the purposes of the Presidio Trust Act. Speed limits shall be posted by using standard traffic control devices.

(c) Operating a vehicle at a speed in excess of the speed limit is prohibited.

(d) An authorized person may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a Presidio Trust road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

**§ 1004.22 Unsafe operation.**

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of § 1004.2.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

**§ 1004.23 Operating under the influence of alcohol or drugs.**

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) Tests. (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within the area administered by the Presidio Trust has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) Presumptive levels. (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

### § 1004.30 Bicycles.

(a) The use of a bicycle is prohibited except on Presidio Trust roads, in parking areas and on routes designated for bicycle use; provided, however, that the Board may close any Presidio Trust road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1001.5 and 1001.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or the resources of the area administered by the Presidio Trust.

(b) *Designated bicycle routes.* The use of a bicycle is permitted in non-developed areas, as follows:

(1) Bicycle use is permitted on routes which have been designated by the Board as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the Presidio Trust and other places convenient to the public.

(2) Bicycle speed limits are as follows:

(i) 15 miles per hour: Upon all designated routes within the area administered by the Presidio Trust.

(ii) 5 miles per hour: On blind curves and when passing other trail users.

(3) The following are prohibited:

(i) The possession of a bicycle on routes not designated as open to bicycle use.

(ii) Operating a bicycle on designated bicycle routes between sunset and sunrise without exhibiting on the bicycle or on the operator an activated white light that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 1004.4, 1004.10, 1004.11 and 1004.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the Executive Director.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

### § 1004.31 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the Board.

## PART 1005—COMMERCIAL AND PRIVATE OPERATIONS

Sec.

1005.1 Advertisements.
1005.2 Alcoholic beverages; sale of intoxicants.
1005.3 Business operations.
1005.4 Commercial passenger-carrying motor vehicles.
1005.5 Commercial photography.
1005.6 Commercial vehicles.
1005.7 Construction of buildings or other facilities.
1005.8 Discrimination in employment practices.
1005.9 Discrimination in furnishing public accommodations and transportation services.
1005.10–1005.12 [Reserved]
1005.13 Nuisances.
1005.14 Prospecting, mining, and mineral leasing.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1005.1 Advertisements.

Commercial notices or advertisements shall not be displayed, posted, or distributed within the area administered by the Presidio Trust unless prior written permission has been given by the Executive Director. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the area administered by the Presidio Trust and such notices and advertisements are found by the Executive Director to be desirable and necessary for the convenience and guidance of the public.

### § 1005.2 Alcoholic beverages; sale of intoxicants.

The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than 1 percent of alcohol by weight, shall conform with all applicable Federal, State, and local laws and regulations. (See also § 1002.35 of this chapter.)

### § 1005.3 Business operations.

Engaging in or soliciting any business in the area administered by the Presidio Trust, except in accordance with the provisions of a permit, contract, or other written agreement with the United States, is prohibited.

### § 1005.4 Commercial passenger-carrying motor vehicles.

Passenger-carrying motor vehicles that are so large as to require special escort in order to proceed safely over Presidio Trust roads, or which in the judgment of the Executive Director are beyond the carrying capacity or safety factor of the roads, will not be permitted in the area administered by the Presidio Trust, except that, where they may satisfactorily enter and travel to the Presidio Trust headquarters they may be parked there during the period of stay.

### § 1005.5 Commercial photography.

(a) *Motion pictures, television.* Before any motion picture may be filmed or any television production or sound track may be made, which involves the use of professional casts, settings, or crews, by any person other than bona fide newsreel or news television personnel, written permission must first be obtained from the Executive Director, in accordance with the following:

(1) *Permit required.* No picture may be filmed, and no television production or sound track made on any area administered by the Presidio Trust, by any person other than amateur or bona fide newsreel and news television photographers and soundmen, unless written permission has been obtained from the Presidio Trust. Applications for permission should be submitted to the Executive Director.

(2) *Fees; bonds.* (i) No fees will be charged for the making of motion pictures, television productions or sound tracks on areas administered by the Presidio Trust. The regular general admission and other fees currently in effect in any area under the jurisdiction of the Presidio Trust are not affected by this paragraph.

(ii) A bond shall be furnished, or deposit made in cash or by certified check, in an amount to be set by the

official in charge of the area to insure full compliance with all of the conditions prescribed in paragraph (a)(4) of this section.

(3) *Approval of application.* Permission to make a motion picture, television production or sound track on areas administered by the Presidio Trust will be granted by the Executive Director in his discretion and on acceptance by the applicant of the conditions set forth in paragraph (a)(4) of this section.

(4) *Form of application.* The following form is prescribed for an application for permission to make a motion picture, television production, or sound track on areas administered by the Presidio Trust:

Date _____

To the Executive Director of the Presidio Trust:

Permission is requested to make, in the area administered by the Presidio Trust, a

_____

The scope of the filming (or production or recording) and the manner and extent thereof will be as follows:

_____

_____

Weather conditions permitting, work will commence on approximately _____ and will be completed on approximately _____. (An additional sheet should be used if necessary.)

The undersigned accepts and will comply with the following conditions:

Utmost care will be exercised to see that no natural features are injured, and after completion of the work the area will, as required by the official in charge, either be cleaned up and restored to its prior condition or left, after clean-up, in a condition satisfactory to the official in charge.

Credit will be given to the Presidio Trust through the use of an appropriate title or announcement, unless there is issued by the official in charge of the area a written statement that no such courtesy credit is desired.

Pictures will be taken of wildlife only when such wildlife will be shown in its natural state or under approved management conditions if such wildlife is confined.

Any special instructions received from the official in charge of the area will be complied with.

Any additional information relating to the privilege applied for by this application will be furnished upon request of the official in charge.

_____

(Applicant)

For _____

(Company)

Bond Requirement $ _____

Approved:

_____

(Date)

_____

(Title)

(b) *Still photography.* The taking of photographs of any vehicle, or other articles of commerce or models for the purpose of commercial advertising without a written permit from the Executive Director is prohibited.

**§ 1005.6 Commercial vehicles.**

(a) The term ''Commercial vehicle'' as used in this section shall include, but not be limited to trucks, station wagons, pickups, passenger cars or other vehicles when used in transporting movable property for a fee or profit, either as a direct charge to another person, or otherwise, or used as an incident to providing services to another person, or used in connection with any business.

(b) The use of government roads within the area administered by the Presidio Trust by commercial vehicles, when such use is in no way connected with the operation of the area administered by the Presidio Trust, is prohibited, except that in emergencies the Executive Director may grant permission to use Presidio Trust roads.

(c) The Executive Director shall issue permits for commercial vehicles used on Presidio Trust roads when such use is necessary for access to private lands situated within or adjacent to the area administered by the Presidio Trust, to which access is otherwise not available.

**§ 1005.7 Construction of buildings or other facilities.**

Constructing or attempting to construct a building, or other structure, boat dock, road, trail, path, or other way, telephone line, telegraph line, power line, or any other private or public utility, upon, across, over, through, or under any area administered by the Presidio Trust, except in accordance with the provisions of a valid permit, contract, or other written agreement with the United States, is prohibited.

**§ 1005.8 Discrimination in employment practices.**

(a) The proprietor, owner, or operator of any hotel, inn, lodge or other facility or accommodation offered to or enjoyed by the general public within the area administered by the Presidio Trust is prohibited from discriminating against any employee or maintaining any employment practice which discriminates because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in connection with any activity provided for or permitted by contract with or permit from the Government or by derivative subcontract or sublease. As used in this section, the term ''employment'' includes, but is not limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Each such proprietor, owner or operator shall post either the following notice or notices supplied in accordance with Executive Order 11246 at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking employment:

*Notice*

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination in employment practices on the basis of race, creed, color, ancestry, sex, age, disabling condition, or national origin is permitted in this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints or violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§ 1005.9 Discrimination in furnishing public accommodations and transportation services.**

(a) The proprietor, owner or operator and the employees of any hotel, inn, lodge, or other facility or accommodation offered to or enjoyed by the general public within the area administered by the Presidio Trust and, while using such area, any commercial passenger-carrying motor vehicle service and its employees, are prohibited from:

(1) Publicizing the facilities, accommodations or any activity conducted therein in any manner that would directly or inferentially reflect upon or question the acceptability of any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin; or

(2) Discriminating by segregation or otherwise against any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in furnishing or refusing to furnish such person or persons any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

(b) Each such proprietor, owner, or operator shall post the following notice at such locations as will insure that the notice and its contents will be

conspicuous to any person seeking accommodations, facilities, services, or privileges:

*Notice*

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition or national origin is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints of violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

**§§ 1005.10–1005.12 [Reserved]**

**§ 1005.13 Nuisances.**

The creation or maintenance of a nuisance upon the federally owned lands of the area administered by the Presidio Trust or upon any private lands within the boundaries of the area administered by the Presidio Trust under the exclusive legislative jurisdiction of the United States is prohibited.

**§ 1005.14 Prospecting, mining, and mineral leasing.**

Prospecting, mining, and the location of mining claims under the general mining laws and leasing under the mineral leasing laws are prohibited in the area administered by the Presidio Trust except as authorized by law.

[FR Doc. 98–17308 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–4R–U

federal register

Tuesday
June 30, 1998

# Part VII

## Office of Management and Budget

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

**48 CFR Part 1, et al.**

## Small Business Administration

**13 CFR Part 121, et al.**

**Federal Acquisition Regulations for Small Disadvantaged Businesses; Notice and Rules**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Small Disadvantaged Business Procurement; Reform of Affirmative Action in Federal Procurement

**AGENCY:** Office of Federal Procurement Policy (OFPP), OMB.

**ACTION:** Notice of determination concerning price evaluation adjustments.

**SUMMARY:** The Federal Acquisition Regulation (FAR), 48 CFR Part 19, contains regulations permitting eligible small disadvantaged businesses (SDB's) to receive price evaluation adjustments in Federal procurement programs. The FAR provides further that the Department of Commerce (DOC) will determine the price evaluation adjustments available for use in Federal procurement programs. The DOC, in the attached memorandum, determines price evaluation adjustments (percentages) by Standard Industrial Classification (SIC) major groups and regions that are effective for new solicitations for the upcoming year. The DOC memorandum describes the methodology for determining price evaluation adjustments.

**EFFECTIVE DATE:** June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, Telephone 202–395–3302. For information on the Commerce methodology, contact Mr. Jeffrey Mayer, Director of Policy Development, Economics and Statistics Administration, U.S. Department of Commerce, Telephone 202–482–1728.

**SUPPLEMENTARY INFORMATION:**

### Procurement Mechanisms and Factors

FAR Subpart 19.11 provides for the use of price evaluation adjustments for eligible SDBs. OFPP gives notice that the attached Memorandum from the DOC determines that certain SIC major groups are eligible for a price evaluation adjustment. The Memorandum also includes factors for use on a regional basis in certain industries. FAR Subpart 19.11 provides that these factors are authorized for use in new solicitations issued on or after October 1, 1998, that allow for a price evaluation adjustment.

**Allan E. Brown,**

*Acting Administrator.*

Attachment

### Department of Commerce

*Economics and Statistics Administration*

Memorandum for Office of Federal Procurement Policy

From: Jeffrey L. Mayer, Director of Policy Development.

Subect: Price Evaluation Adjustments and Benchmarking Methodology.

Pursuant to new Federal Acquisition Regulation (FAR) 19.201(b), transmitted herein is the Department of Commerce determination on the price evaluation adjustments for use in Federal procurements and the supporting benchmarking methodology.

### I. Background

FAR 19.201(b) requires the Department of Commerce to determine price evaluation adjustments for applicable standard industrial classification (SIC) major groups. To establish price evaluation adjustments, the Office of the Chief Economist and the Office of Policy Development in the Economics and Statistics Administration of the Department of Commerce (DOC) conducted an economic analysis to identify industries eligible for price evaluation adjustments to implement the Administration's proposal for reforming affirmative action in Federal procurement programs.

DOC is responsible for: (i) developing the methodology for calculating the benchmark limitations; (ii) developing the methodology for calculating the size of the price evaluation adjustments that should be employed in a given industry; and (iii) determining applicable adjustments. In addition, DOC is charged with providing information to the Small Business Administration for its use in administering the 8(a) program.

### II. Price Evaluation Adjustments

Based upon the methodology described below, DOC determines that a price evaluation adjustment of ten percent be employed in the following industries:

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT

| SIC major industry group | Eligibility (*) | Description of industry grouping |
|---|---|---|
| **Agriculture, Forestry, and Fishing** | | |
| 01 | | Agricultural production—crops. |
| 02 | | Agricultural production—livestock. |
| 07 | | Agricultural services. |
| 08 | | Forestry. |
| 09 | | Fishing, hunting, & trapping. |
| **Mining** | | |
| 10 | * | Metal mining. |
| 12 | * | Coal mining. |
| 13 | * | Oil & gas extraction. |
| 14 | * | Extraction of nonmetallic minerals, ex. Fuels. |
| **Construction** | | |
| 15 | | Building construction—general contractors. |
| 15 | * | East North Central. |
| 15 | * | East South Central. |
| 15 | * | Middle Atlantic. |
| 15 | | Mountain. |
| 15 | | New England. |
| 15 | | Pacific. |
| 15 | | South Atlantic. |
| 15 | | West North Central. |
| 15 | * | West South Central. |

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT—Continued

| SIC major industry group | Eligibility (*) | Description of industry grouping |
|---|---|---|
| 16 | | Heavy construction other than buildings—contractors. |
| 16 | | East North Central. |
| 16 | * | East South Central. |
| 16 | | Middle Atlantic. |
| 16 | | Mountain. |
| 16 | | New England. |
| 16 | | Pacific. |
| 16 | | South Atlantic. |
| 16 | | West North Central. |
| 16 | * | West South Central. |
| 17 | | Construction—special trade contractors. |
| 17 | | East North Central. |
| 17 | | East South Central. |
| 17 | | Middle Atlantic. |
| 17 | | Mountain. |
| 17 | * | New England. |
| 17 | | Pacific. |
| 17 | | South Atlantic. |
| 17 | * | West North Central. |
| 17 | | West South Central. |
| **Manufacturing** | | |
| 20 | | Food & kindred products. |
| 21 | | Tobacco products. |
| 22 | * | Textile mill products. |
| 23 | * | Apparel & other finished products made from fabrics. |
| 24 | * | Lumber & wood products, ex. Furniture. |
| 25 | * | Furniture & fixtures. |
| 26 | * | Paper & allied products. |
| 27 | * | Printing, publishing, & allied industries. |
| 28 | * | Chemicals & allied products. |
| 29 | * | Petroleum refining & related industries. |
| 30 | * | Rubber & miscellaneous plastics products. |
| 31 | * | Leather & leather products. |
| 32 | | Stone, clay, glass, & concrete products. |
| 33 | | Primary metal industries. |
| 34 | * | Fabricated metal products. |
| 35 | | Industrial & commercial machinery & computer equipment. |
| 36 | * | Electronic & other electrical equipment & components, ex. Computers. |
| 37 | * | Transportation equipment. |
| 38 | * | Measuring, analyzing, & controlling instruments; photographic, medical & optical goods; watches & clocks. |
| 39 | * | Miscellaneous manufacturing industries. |
| **Transportation, Communications, Electric, Gas, Sanitary Services** | | |
| 40 | | Railroad transportation. |
| 41 | * | Local & suburban transit & interurban highway passenger transportation. |
| 42 | * | Motor freight transportation & warehousing. |
| 44 | * | Water transportation. |
| 45 | | Transportation by air. |
| 46 | * | Pipelines, exc. natural gas. |
| 47 | * | Transportation services. |
| 48 | * | Communications. |
| 49 | * | Electric, gas, & sanitary services. |
| **Wholesale Trade** | | |
| 50 | * | Wholesale trade—durable goods. |
| 51 | * | Wholesale trade—nondurable goods. |
| **Retail Trade** | | |
| 52 | * | Building materials, hardware, garden supply, & mobile home dealers. |
| 53 | * | General Merchandise stores. |
| 54 | * | Food stores. |
| 55 | * | Automotive dealers & gasoline service stations. |
| 56 | * | Apparel & accessory stores. |
| 57 | * | Home furniture, furnishings, & equipment stores. |
| 58 | * | Eating & drinking places. |
| 59 | * | Miscellaneous retail. |

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT—Continued

| SIC major industry group | Eligibility (*) | Description of industry grouping |
|---|---|---|
| **Finance, Insurance, and Real Estate** | | |
| 60 | * | Depository institutions. |
| 61 | * | Nondepository adjustment institutions. |
| 62 | * | Security & commodity brokers, dealers, exchanges, & services. |
| 63 | * | Insurance carriers. |
| 64 | * | Insurance agents, brokers, & services. |
| 65 | * | Real estate. |
| 67 | * | Holding & other investment offices. |
| **Services** | | |
| 70 | * | Hotels, rooming houses, camps, & other lodging places. |
| 72 | | Personal services. |
| 73 | * | Business services. |
| 75 | * | Automotive repair, services, & parking. |
| 76 | * | Miscellaneous repair services. |
| 78 | | Motion pictures. |
| 79 | | Amusement & recreation services. |
| 80 | * | Health services. |
| 81 | | Legal services. |
| 82 | * | Educational services. |
| 83 | | Social services. |
| 84 | | Museums, art galleries, & botanical & zoological gardens |
| 86 | | Membership organizations. |
| 87 | * | Engineering, accounting, research, management, & related services. |
| 88 | | Private households. |
| 89 | * | Miscellaneous services. |

## III. Benchmarking Methodology

DOC's methodology is designed to ensure that the price adjustments authorized by the reforms are narrowly tailored to remedy discrimination. The methodology includes four steps. First, DOC identified firms that are ''ready and willing'' to supply the federal government. Second, DOC calculated the federal government's utilization of each ready and willing firm as the FY 1996 net contract obligations awarded by federal agencies to each ready and willing firm. Third, DOC estimated the capacity of each ready and willing firm to supply the federal government. Finally, DOC compared SDB shares of utilization and capacity held by ready and willing firms in each Contracting Arena [1] and recommended that the price evaluation adjustments be implemented where SDB share of industry utilization falls short of SDB share of industry capacity.

### *A. Data*

DOC set four major criteria for choosing the data needed to estimate the benchmark limitations:

- The data should be as current as possible;
- The data should include information on a large number of firms, including SDBs;
- The data should identify firms that are ready and willing to supply the federal government;
- The data should permit the direct comparison of capacity and utilization for the same year.

No existing data sets, such as the Survey of Minority-Owned Business Enterprises (conducted by the U.S. Bureau of the Census), were designed to meet these criteria. Consequently, DOC identified three sets of firms as ready and willing to supply the federal government in FY 1996.[2] These sets are:

1. Bidders from a sample of competitive procurements (over $25,000) in FY 1996. DOC implemented a survey of federal contracting officers, who were asked to identify the firms that bid in a random sample of 16,616 procurements (the survey had a response rate of 76 percent). The sample of procurements was drawn from a sampling frame consisting of all new, competitive, multi-bid contracts awarded by major federal agencies.[3] The sampling frame was extracted from the Federal Procurement Data System (FPDS) for prime contract actions worth more than $25,000.[4] The sampling frame

[1] A firm's Contracting Arena is the industry grouping in which it bid, was awarded a contract, or had 8(a) certification and (in the case of construction companies) the Census Division where it was located. In most cases, the industry grouping is the two digit Standard Industrial Classification major industry group. The following related major industry groups were regrouped together for purposes of applying the benchmarking methodology because otherwise the regression analysis (described below) for at least one of the constituent major industry groups would have had what DOC deemed to be an insufficient number of firms (that is, less than 30 degrees of freedom): agriculture (SIC Major Industry Groups 01, 02, 07); forestry and fishing (08, 09); mining (10, 12, 13, 14); rubber, misc. plastic products, and leather products (30, 31); local transit, interurban highway passenger transportation, and misc. transportation services (41, 47); pipelines and utilities (46, 49); retail trade other than eating and drinking places (53, 54, 55, 56, 57,59); and finance, insurance, and real estate (60, 61, 62, 63, 64, 65, 67). We could make no satisfactory aggregation for several major industry groups (21, 40, 72, 78, 79, 81, 84, 86, 88) that would allow analysis with a sufficient number of firms.

[2] Unique ''firms'' were identified by their Taxpayer Identification Numbers (TIN) and the Contracting Arenas in which they participated in federal contracting. Firms with missing or defective TINs or Contracting Arena information were not included in the unified data set. A firm can be any for-profit company, non-profit organization, or a state or local government establishment that bid for a federal contract, or a company certified in the 8(a) program. Finally, some firms were included more than once if they participated in federal contracting in more than one Contracting Arena.

[3] The agencies were all 14 cabinet agencies, plus EPA, GSA, NASA, and TVA, which together accounted for 98.8 percent of the value of all procurement contracts over $25,000 in FY 1996.

[4] Awards under contracts valued at $25,000 or less (and individual contract actions worth $25,000 or less and awarded by DOD) accounted for only 7.2 percent of all federal contract awards in FY 1996. The FPDS does not include detailed data on individual contracts worth $25,000 or less, making it impossible to include these contracts in DOC's analysis. Since the SDB share of the sub-$25,000 awards was only 3.3 percent, while the SDB share of awards over $25,000 was 5.8 percent, omitting the sub-$25,000 awards (where usage of 8(a) contracting is negligible) does not under-estimate SDB utilization.

was stratified by the two, three, or four-digit Standard Industrial Classification (SIC) codes corresponding to the major activity covered by each contract. For SIC 15, SIC 16 and SIC 17 (i.e., construction industries), the sampling frame was further stratified by the nine multi-state Census Divisions in which the contractor was located. Each sampled contract had a sample weight equal to the reciprocal of its probability of being sampled. All firms responding to the solicitation resulting in the contract in the sample were included in the resulting bidders' data set.

2. All firms that won all other types of new contracts (over $25,000) in FY 1996, i.e., firms identified in the FY 1996 FPDS that were the sole bidder on new, competitive contracts, and firms awarded new contracts in FY 1996 through noncompetitive contracting.[5]

3. All firms certified as active and eligible for 8(a) contracts by the Small Business Administration in FY 1996, whether or not the firms won new contracts in FY 1996.

To prevent duplication, DOC matched the three data sets by the firms' Taxpayer Identification Numbers and the Contracting Arenas in which they participated in federal contracting. Each firm that appeared in data sets (2) or (3) was given a sample weight of 1.0, as these firms were sampled with certainty. DOC recomputed the sample weights for each firm that appeared more than once in data set (1), but not in data sets (2) and (3), as the inverse of the joint probability of being selected, where the probability of each solicitation that resulted in a contract being selected was independent.[6] The resulting ''Ready and Willing Data Set'' had no firms with duplicate Taxpayer Identification Numbers in the same Contracting Arena.[7]

DOC then matched the firms in the Ready and Willing Data Set by their Taxpayer Identification Numbers to data on firm age,[8] annual payroll, and for-profit status for all payroll taxpaying legal entities included in the Census Bureau's 1995 Standard Statistical Establishment List (SSEL), which consists of all establishments in the United States. The SSEL was also used to fill in the state where construction firms were located, if the Ready and Willing Data Set was missing that information.[9]

*B. Computing SDB Share of Utilization*

DOC matched firms in the Ready and Willing Data Set to the FPDS, by their Taxpayer Identification Numbers and Contracting Arenas to obtain the total net contract obligations actually awarded (''utilization'') to these firms in FY 1996. The resulting data set is called the ''Utilization Data Set.'' DOC then computed the SDB share of utilization in a Contracting Arena by dividing the weighted sum of utilization of SDB firms in the Contracting Arena by the weighted sum of utilization of all firms the Contracting Arena (regardless of SDB status), where the weights were the sample weights in the Ready and Willing Data Set.

*C. Estimating SDB Share of Capacity*

DOC defined a firm's capacity to fulfill federal contracts as the geometric mean value of federal contracting work a contractor of a given size and age handles, in a given Contracting Arena. The method for estimating capacity is as follows:

1. Using the Utilization Data Set, the natural logarithm of utilization was regressed on the following variables for for-profit firms in each Contracting Arena with positive utilization:

- A constant term;
- Firm age in 1996 (measured as the natural logarithm of number of years since the firm first appeared in the SSEL);
- A dummy variable if the firm first appeared in the SSEL before 1975;
- The natural logarithm of 1995 payroll (measured in thousands of dollars);
- Interaction terms between the natural logarithm of payroll and the two age variables;
- A dummy variable if the firm certified that it met the Small Business Administration's definition of a small business in that Contracting Arena.

2. Using the Utilization Data Set, the mean natural logarithm of utilization was computed separately for two groups of firms in each Contracting Arena:

- Firms missing one or more of the regressors listed in step 1 above;
- Non-profit and government establishments.

This was done so that we would not have to drop these firms from our analysis and possibly bias our estimates. Not-for-profit and government entities do not fit well into our basic regression model, since payroll data are probably not a true measure of resource limits for a government establishment and because non-profit organizations may behave differently from for-profit firms participating in federal contracting.

3. The mean natural logarithm of utilization for firms of a given size and age was estimated for each of the for-profit firms with complete data in the Ready and Willing Data Set by computing their predicted utilization using the regression coefficients estimated in step 1 above and the corresponding characteristics of ready and willing firms (i.e., their payroll, age, and small business status).

4. The mean natural logarithm of utilization for profit-making firms with missing data and for non-profit/government entities in the Ready and Willing Data Set was set equal to the corresponding means computed in step 2 above.

5. The estimates of mean natural logarithm of utilization were exponentiated to convert them to dollar amounts; these were each firm's ''capacity'' to fulfill federal contracts.

6. Weighted sums of the capacity estimates were then computed for SDBs and for all firms in each Contracting Arena, where the weights were the sample weights described in section III.A. above.

7. The benchmark limitations (i.e., SDB share of industry capacity held by firms ready and willing to fulfill federal contracts) in each Contracting Arena is equal to the ratio of the weighted sum of SDB capacities to the weighted sum of capacities of all firms in the Contracting Arena.

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[5] Firms listed under GSA and VA schedules in FY 1996 and that did not appear elsewhere in the FY 1996 data were not included in DOC's analysis; total orders under these schedules accounted for only 1.6 percent of contract awards greater than $25,000 in FY 1996. DOC found that omitting these firms had no effect on its findings.

[6] Competitive contracts were sampled without replacement for purposes of collecting data on bidders, so the probability of selecting one contract is independent of the probability of selecting another. However, since many firms bid for more than one contract, bidders were sampled with replacement.

[7] Some firms in the Ready and Willing Data Set did not consistently identify their SDB status. DOC based its decision on which SDB designation to accept as follows:

- All 8(a) certified firms were assumed to be SDBs;
- If a firm was not 8(a) certified, then it was considered SDB if it self-certified as SDB on any offer in the bidders' sample;
- If a firm was in neither the 8(a) certified data set nor in the bidders' data set, then its SDB status was assumed to be the most frequently appearing status that appeared for the firm in the FPDS.

[8] More precisely, each firm's age was derived from a variable in the SSEL that indicated the year that the TIN first appeared in the SSEL, the earliest effective year being 1975, when Census first began keeping track of when firms appeared in the data set.

[9] Any estimates that used SSEL data were subject to the Census Bureau's Title 13 disclosure rules and must be accompanied by this standard notice:

''The research described in this memorandum was conducted while the authors were research associates at the Center for Economic Studies, U.S. Bureau of the Census. Research results and conclusions expressed are those of the authors and do not necessarily indicate concurrence by the Bureau of the Census or the Center for Economic Studies.''

In this way, DOC's method for estimating capacity converts the number of ready and willing firms that contract with the federal government to aggregate expected value of the amount (in dollars) of federal contracting that ready and willing firms potentially could fulfill. The method adjusts raw firm counts to reflect observable characteristics widely believed to be associated with the quantity of federal contracting work that a firm is able to manage.

## IV. Estimating the Size of the Price Evaluation Adjustment

Based on the Defense Department's experience with its price evaluation adjustment, DOC determined that a price evaluation adjustment of ten percent would not raise the SDB share of utilization above the SDB share of capacity held by firms ready and willing to fulfill federal contracts in any industry (and regions, in the case of the construction sector). Accordingly, DOC determined that there were no industries (and regions, in the case of the construction sector) where a price evaluation adjustment greater than 0 percent and less than ten percent would be appropriate.

## V. Basis for DOC's Determinations

DOC compared the benchmark limitations for each Contracting Arena to the SDB shares of actual utilization in each Contracting Arena. DOC determined that a price adjustment be used in those Contracting Arenas where it can be shown that SDBs have a greater share of capacity than the federal government is using, i.e., where the benchmark limitations exceed SDB shares of actual utilization.[10]

[FR Doc. 98–17157 Filed 6–26–98; 8:45 am]

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[10] In effect, the benchmarking methodology measures gaps in contracting awards to SDBs that are unrelated to size and age differences with non-SDBs. The methodology does not attempt to estimate SDB share of industry capacity to fulfill federal contracts in the absence of all current and past discrimination. In other words, to the extent that differences in size, age, or number of firms reflect discrimination against small, disadvantaged businesses, this analysis does not take direct account of such discrimination, which may be substantial.

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 12, 14, 15, 19, 33, and 52**

**[FAC 97–06; FAR Case 97–004A]**

**RIN 9000–AH59**

## Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

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

**SUMMARY:** The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have agreed to issue Federal Acquisition Circular 97–06, as an interim rule to make amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business (SDB) concerns. These amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is a major rule under 5 U.S.C. 804.

**DATES:** *Effective Date:* October 1, 1998.

*Applicability Date:* The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after October 1, 1998.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before August 31, 1998 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97–004A@gsa.gov

Please cite FAC 97–06, FAR case 97–004A in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Victoria Moss, Procurement Analyst, Federal Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington DC 20405, Telephone: (202) 501–4764

or

Mr. Mike Sipple, Procurement Analyst, Contract Policy and Administration, Director, Defense Procurement, Department of Defense, 3060 Defense Pentagon, Washington DC 20301–3060, Telephone: (703) 695–8567.

For general information call the FAR Secretariat at (202) 501-4755.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*In Adarand,* the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any Federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling Government interest.

DoJ developed a proposed structure to reform affirmative action in Federal procurement designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand.* The DoJ proposal was published in the **Federal Register** for public notice and invitation for comments at 61 FR 26042, May 23, 1996. The DoJ model is expected to be implemented in several parts: revisions to the FAR and the FAR supplements; Small Business Administration (SBA) regulations; and procurement mechanisms and applicable factors (percentages) determined by the Department of Commerce (DoC). The SBA regulations were published for public comment on August 14, 1997 (62 FR 23584). This interim rule contains certain FAR revisions. On May 9, 1997, proposed amendments to the FAR, based on the DoJ Model, were published as a proposed rule in the **Federal Register** (62 FR 25786). All public comments received in response to the proposed rule were considered in the formulation of this interim rule. 143 letters containing approximately 222 comments were received in response to the proposed rule. The following significant changes were made to the rule based on the comments received:

1. Changes were made to conform it to the regulations issued by the Small Business Administration. These changes include conforming protest and appeal and certification procedures in the FAR to those prescribed by SBA.

2. Clarifying that the annual DoC determination of procurement mechanisms shall only affect solicitations that are issued on or after the effective date of the DoC determination.

3. Clarifying that any decisions to limit use of the mechanisms because of a finding of undue burden will not affect on-going acquisitions.

4. Clarifying that an individual or business concern need only provide supporting rationale in a request for an undue burden determination.

5. Clarifying that fair market price under the price evaluation adjustment shall be determined in accordance with the procedures in 15.404–1(b) (referenced in 19.202–6).

6. Removing the prohibition against use of the price evaluation adjustment for acquisitions under the Competitiveness Demonstration Program.

7. Revising the provisions at 52.212–3 and 52.219–1, and the clause at 52.219–23 to facilitate their use by all agencies.

Other changes have been made to make the rule effective at the earliest practicable date, taking account of the time required for SBA to determine eligibility of SDB firms. This rule implements the price evaluation adjustment for SDB concerns. It is anticipated that coverage pertaining to the SDB participation program will be issued 1 day following publication of this rule under FAR Case 97–004B.

### B. Regulatory Flexibility Act

These changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because through the rule small business concerns may be provided benefits in Federal contracting. An Initial Regulatory Flexibility Analysis (IRFA) was prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA). A summary of the IRFA was published along with the FAR proposed rule in the **Federal Register** at 62 FR 25786, May 9, 997. The economic impact associated with certification and associated costs, as well as other program requirements addressed in the SBA's changes to 13 CFR Parts 121, 124, and 134 have been addressed in analyses prepared by the SBA. The following information is provided to update the IRFA related to this FAR interim rule:

This interim rule would establish in the FAR a procurement mechanism benefiting

small disadvantaged businesses (SDBs). The mechanism is a price evaluation adjustment of up to ten percent in certain Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. This price evaluation adjustment would be mandatory for those competitive procurements to which it applied. It would not, however, apply to several major categories of acquisition, including, for example, acquisitions within the simplified acquisition threshold, acquisitions set aside for small business, and acquisitions conducted pursuant to the 8(a) program.

The main impact of the rule is expected to be on SDBs seeking to obtain contracts from Federal government agencies. The best available estimate of the number of such firms is 30,000. The basis for this estimate is the IRFA prepared by SBA addressing the changes to 13 CFR Parts 121, 124, and 134. The anticipated costs for certification and protest and appeal procedures are addressed in SBA's IRFA. The primary impact of this interim rule is expected to be the increase in contract awards to qualified firms and a corresponding decrease in contract awards to firms that are not qualified as SDBs.

Within the constraints imposed by the need to implement the DoJ-proposed reforms, the rule was crafted throughout to select alternatives that would minimize any adverse economic impact on small business.

A copy of the IRFA may be obtained from the FAR Secretariat.

### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies because the interim rule contains reporting and recordkeeping requirements. Requests for approval of new information collection requirements were submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collections required by this rule were approved under clearance 9000–0150 through June 30, 2000. Public comments concerning this request were invited through a **Federal Register** notice published on May 9, 1997. No comments were received.

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the FAR to the model program designed by the Department of Justice to ensure compliance with Constitutional standards established by the Supreme Court and, thereby, avoid unnecessary litigation. A proposed FAR rule on this subject was published for public comment at 62 FR 25786 on May 9, 1997. As a result of public comments received in response to the proposed rule, changes have been made to the rule. This interim rule would qualify for publication as a final rule; however, further public comments are requested. Pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Parts 1, 12, 14, 15, 19, 33, and 52

Government procurement.

Dated: June 23, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Federal Acquisition Circular—FAC 97–06**

Federal Acquisition Circular (FAC) 97–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after October 1, 1998.

Dated: June 17, 1998.

R.D. Kerrins,

*Col., USA, Dep Director, Defense Procurement.*

Dated: June 16, 1998.

Ida M. Ustad,

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: June 17, 1998.

Deidre A. Lee,

*Associate Administrator for Procurement, NASA.*

Therefore, 48 CFR Parts 1, 12, 14, 15, 19, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 12, 14, 15, 19, 33, and 52 continues to read as follows:

**Authority:** 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding, in numerical order, the following entries:

**1.106 OMB approval under the Paperwork Reduction Act.**

* * * * *

| FAR segment | OMB control No. |
|---|---|
| * * * * * | |
| 52.219–22 ..... | 9000–0150 |
| 52.219–23 ..... | 9000–0150 |
| * * * * * | |

## PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.301 is amended by revising paragraph (b)(2) to read as follows:

**12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

* * * * *

(b) * * *

(2) *The provision at 52.212–3, Offeror Representations and Certifications-Commercial Items.* This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4. Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a);

* * * * *

4. Section 12.303(b)(1) is revised to read as follows:

**12.303 Contract format.**

* * * * *

(b) * * *

(1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), or if set aside for emerging small businesses;

* * * * *

## PART 14—SEALED BIDDING

5. The section heading for 14.206 is revised to read as set forth below.

**14.206 Small business set-asides and price evaluation adjustments for small disadvantaged business concerns.**

6. Section 14.502 is amended by redesignating paragraph (b)(4) as (b)(5) and adding a new (b)(4) to read as follows:

**14.502 Conditions for use.**

* * * * *

(b) * * *

(4) The use of the price evaluation adjustment for small disadvantaged business concerns (see Subpart 19.11).

* * * * *

## PART 15—CONTRACTING BY NEGOTIATION

7. Section 15.503 is amended by revising paragraph (a)(2) to read as follows:

### 15.503 Notifications to unsuccessful offerors.

(a) * * *

(2) *Preaward notices for small business programs.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see Subpart 19.5), or when a small disadvantaged business concern receives a benefit based on its disadvantaged status (see Subpart 19.11) and is the apparently successful offeror, upon completion of negotiations and determinations of responsibility, and completion of the process in 19.304(d), if necessary, but prior to award, the contracting officer shall notify each offeror in writing of the name and address of the apparently successful offeror. The notice shall also state that the Government will not consider subsequent revisions of the offeror's proposal; and no response is required unless a basis exists to challenge the disadvantaged status and/or small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805–2).

* * * * *

## PART 19—SMALL BUSINESS PROGRAMS

8. Section 19.000 is amended by revising the introductory text of paragraph (a); at the end of (a)(6) by removing ''and''; at the end of (a)(7) by removing the period and inserting''; and''; and by adding paragraph (a)(8) to read as follows:

### 19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act (15 U.S.C. 631, *et seq.*), applicable sections of the Armed Services Procurement Act (10 U.S.C. 2302, *et seq.*), the Federal Property and Administrative Services Act (41 U.S.C. 252), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), 10 U.S.C. 2323, and Executive Order 12138, May 18, 1979. It covers—

* * * * *

(8) The use of a price evaluation adjustment for small disadvantaged business concerns.

* * * * *

9. Section 19.001 is amended in the definition of ''Small disadvantaged business concern'' by revising its introductory paragraph; by redesignating paragraphs (a) and (b) introductory text as (a)(1) and (a)(2) introductory text; (b)(1), (b)(2), and (b)(3) as (a)(2)(i), (a)(2)(ii), and (a)(2)(iii); and (c) and (d) as (a)(3) and (a)(4); and by adding paragraphs (a) introductory text and (b) to read as follows:

### 19.001 Definitions.

* * * * *

*Small disadvantaged business concern*, as used in this part, means—

(a) For subcontractors, a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR 124.

* * * * *

(b) For prime contractors, (except for 52.212–3(c)(2) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(7)(ii), 52.219–22(b)(2), and 52.219–23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns) an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification from the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B, and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, a contractor must receive certification as an SDB by the SBA prior to contract award.

10. Section 19.201 is amended by redesignating paragraphs (b), (c), and (d) as (c), (d), and (e), respectively; and by adding new paragraphs (b) and (f) to read as follows:

### 19.201 General policy.

* * * * *

(b) The Department of Commerce will determine on an annual basis, by Major Groups as contained in the Standard Industrial Classification (SIC) manual, and region, if any, the authorized small disadvantaged business (SDB) procurement mechanisms and applicable factors (percentages). The Department of Commerce determination shall only affect solicitations that are issued on or after the effective date of the determination. The effective date of the Department of Commerce determination shall be no less than 60 days after its publication date. The Department of Commerce determination shall not affect ongoing acquisitions. The Department of Commerce determination shall include the applicable factors, by SIC Major Group, to be used in the price evaluation adjustment for SDB concerns (see 19.1104). The authorized procurement mechanisms shall be applied consistently with the policies and procedures in this subpart. The agencies shall apply the SDB procurement mechanisms determined by the Department of Commerce. The Department of Commerce, in making its determination, is not limited to the price evaluation adjustment for SDB concerns where the Department of Commerce has found substantial and persuasive evidence of—

(1) A persistent and significant underutilization of minority firms in a particular industry, attributable to past or present discrimination; and

(2) A demonstrated incapacity to alleviate the problem by using those mechanisms.

* * * * *

(f)(1) Each agency shall designate, at levels it determines appropriate, personnel responsible for determining whether, in order to achieve the contracting agency's goal for SDB concerns, the use of the SDB mechanism in Subpart 19.11 has resulted in an undue burden on non-SDB firms in one of the major industry groups and regions identified by Department of Commerce following paragraph (b) of this section, or is otherwise inappropriate. Determinations under this subpart are for the purpose of determining future acquisitions and shall not affect ongoing acquisitions. Requests for a determination, including supporting rationale, may be submitted to the agency designee. If the agency designee makes an affirmative determination that the SDB mechanism has an undue burden or is otherwise inappropriate, the determination shall be forwarded through agency channels to the OFPP, which shall review the determination in consultation with the Department of Commerce and the Small Business Administration. At a minimum, the following information should be included in any submittal:

(i) A determination of undue burden or other inappropriate effect, including proposed corrective action.

(ii) The SIC Major Group affected.

(iii) Supporting information to justify the determination, including, but not limited to, dollars and percentages of contracts awarded by the contracting activity under the affected SIC Major Group for the previous two fiscal years and current fiscal year to date for—

(A) Total awards;

(B) Total awards to SDB concerns;

(C) Awards to SDB concerns awarded contracts under the SDB price evaluation adjustment where the SDB concerns would not otherwise have been the successful offeror;

(D) Number of successful and unsuccessful SDB offerors; and

(E) Number of successful and unsuccessful non-SDB offerors.

(iv) A discussion of the pertinent findings, including any peculiarities related to the industry, regions or demographics.

(v) A discussion of other efforts the agency has undertaken to ensure equal opportunity for SDBs in contracting with the agency.

(2) After consultation with OFPP, or if the agency does not receive a response from OFPP within 90 days after notice is provided to OFPP, the contracting agency may limit the use of the SDB mechanism in Subpart 19.11 until the Department of Commerce determines the updated price evaluation adjustment, as required by this section. This limitation shall not apply to solicitations that already have been synopsized.

11. Section 19.202–6 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

**19.202–6 Determination of fair market price.**

Agencies shall determine the fair market price as follows:

(a) For total and partial small business set-aside contracts and contracts utilizing the price evaluation adjustment for small disadvantaged business concerns, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404–1(b).

* * * * *

## Subpart 19.3—Determination of Status as a Small Disadvantaged Business Concern or a Small Business Concern

12. The heading for Subpart 19.3 is revised to read as set forth above.

13. Section 19.302 is amended at the end of the introductory text of paragraph (d) by adding the following sentence:

**19.302 Protesting a small business representation.**

* * * * *

(d) * * * SBA's regulations on timeliness related to protests of disadvantaged status are contained in 13 CFR 124, Subpart B.

**19.304 [Redesignated as 19.306]**

14a. Section 19.304 is redesignated as 19.306.

14b. New sections 19.304 and 19.305 are added to read as follows:

**19.304 Disadvantaged business status.**

(a) To be eligible to receive a benefit as a prime contractor based on its disadvantaged status, a concern, at the time of its offer, must either be certified as a small disadvantaged business (SDB) concern or have a completed SDB application pending at the SBA or a Private Certifier (see 19.001).

(b) The contracting officer may accept an offeror's representation that it is an SDB concern for general statistical purposes. The provision at 52.219–1, Small Business Program Representations, or 52.212–3(c)(2), Offeror Representations and Certifications-Commercial Items, is used to collect SDB data for general statistical purposes.

(c) The provision at 52.219–22, Small Disadvantaged Business Status, or 52.212–3(c)(7), Offeror Representations and Certifications—Commercial Items, is used to obtain SDB status when the prime contractor may receive a benefit based on its disadvantaged status. The mechanism that may provide benefits on the basis of disadvantaged status as a prime contractor is a price evaluation adjustment for SDB concerns (see Subpart 19.11).

(1) If the apparently successful offeror has represented that it is currently certified as an SDB, the contracting officer may confirm that the concern is listed on the SBA's register by accessing the list at http://www.sba.gov or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(2) If the apparently successful offeror has represented that its SDB application is pending at the SBA or a Private Certifier, and its position as the apparently successful offeror is due to the application of the price evaluation adjustment, the contracting officer shall follow the procedure in paragraph (d) of this section.

(d) Notifications to SBA of potential awards to offerors with pending SDB applications. (1) The contracting officer shall notify the Small Business Administration Assistant Administrator for SDBCE 409 Third Street, SW Washington, DC 20416. The notification shall contain the name of the apparently successful offeror, and the names of any other offerors that have represented that their applications for SDB status are pending at the SBA or a Private Certifier and that could receive the award due to the application of a price evaluation adjustment if the apparently successful offeror is determined not to be an SDB by the SBA.

(2) The SBA will, within 15 calendar days after receipt of the notification, determine the disadvantaged status of the apparently successful offeror and, as appropriate, any other offerors referred by the contracting officer and will notify the contracting officer.

(3) If the contracting officer does not receive an SBA determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer shall presume that the apparently successful offeror, and any other offerors referred by the contracting officer, are not disadvantaged, and shall make award accordingly, unless the contracting officer grants an extension to the 15-day response period. No

written determination is required for the contracting officer to make award at any point following the expiration of the 15-day response period.

(4) When the contracting officer makes a written determination that award must be made to protect the public interest, the contracting officer may proceed to contract award without notifying SBA or before receiving a determination of SDB status from SBA during the 15-day response period. In both cases, the contracting officer shall presume that the apparently successful offeror, or any other offeror referred to the SBA whose SDB application is pending, is not an SDB and shall make award accordingly.

**19.305 Protesting a representation of disadvantaged business status.**

(a) This section applies to protests of a small business concern's disadvantaged status as a prime contractor. Protests of a small business concern's disadvantaged status as a subcontractor are processed under 19.703(a)(2). Protests of a concern's size as a prime contractor are processed under 19.302. Protests of a concern's size as a subcontractor are processed under 19.703(b). An offeror, the contracting officer, or the SBA may protest the apparently successful offeror's representation of disadvantaged status if the concern is eligible to receive a benefit based on its disadvantaged status (see Subpart 19.11).

(b) An offeror, excluding an offeror determined by the contracting officer to be non-responsive or outside the competitive range, or an offeror that SBA has previously found to be ineligible for the requirement at issue, may protest the apparently successful offeror's representation of disadvantaged status by filing a protest in writing with the contracting officer. SBA regulations concerning protests are contained in 13 CFR 124, Subpart B. The protest—

(1) Must be filed within the times specified in 19.302(d)(1); and

(2) Must contain specific facts or allegations supporting the basis of protest.

(c) The contracting officer or the SBA may protest in writing a concern's representation of disadvantaged status at any time following bid opening or notification of intended award.

(1) If a contracting officer's protest is based on information provided by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA may protest a concern's representation of disadvantaged status by filing directly with its Assistant Administrator for Small Disadvantaged Business Certification and Eligibility and notifying the contracting officer.

(d) The contracting officer shall return premature protests to the protestor. A protest is considered to be premature if it is submitted before bid opening or notification of intended award. SBA normally will not consider a postaward protest. SBA may consider a postaward protest in its discretion where it determines that an SDB determination after award is meaningful (*e.g.*, where the contracting officer agrees to terminate the contract if the protest is sustained).

(e) Upon receipt of a protest that is not premature, the contracting officer shall withhold award and forward the protest to Small Business Administration, Assistant Administrator for SDBCE, 409 Third Street, SW, Washington, DC 20416. The contracting officer shall send to SBA—

(1) The written protest and any accompanying materials;

(2) The date the protest was received;

(3) A copy of the protested concern's representation as a small disadvantaged business, and the date of such representation; and

(4) The date of bid opening or date on which notification of the apparently successful offeror was sent to unsuccessful offerors.

(f) When the contracting officer makes a written determination that award must be made to protect the public interest, award may be made notwithstanding the protest.

(g) The SBA Assistant Administrator for Small Disadvantaged Business Certification and Eligibility will notify the protestor and the contracting officer of the date the protest was received and whether it will be processed or dismissed for lack of timeliness or specificity. For protests that are not dismissed, the SBA will, within 15 working days after receipt of the protest, determine the disadvantaged status of the challenged offeror and will notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless it is appealed and—

(1) The contracting officer receives the SBA's decision on the appeal before award; or

(2) The contracting officer has agreed to terminate the contract, as appropriate, based on the outcome of the appeal (see 13 CFR 124, Subpart B).

(h) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is disadvantaged and may award the contract, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(i) An SBA determination may be appealed by—

(1) The party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

(j) The appeal must be filed with the SBA's Administrator or designee within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will not apply to the instant acquisition (but see paragraph (g)(2) of this section).

15. Newly redesignated 19.306 is amended in paragraph (a) by adding a sentence at the end of the paragraph; and by redesignating paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

**19.306 Solicitation provision and contract clause.**

(a) * * * The provision shall be used with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a).

(b) The contracting officer shall insert the provision at 52.219–22, Small Disadvantaged Business Status, in solicitations that include the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

16. Subpart 19.11, consisting of sections 19.1101 through 19.1104, is added to read as follows:

## Subpart 19.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

Sec.

19.1101 General.
19.1102 Applicability.
19.1103 Procedures.
19.1104 Solicitation provisions and contract clauses.

**Authority:** 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## Subpart 19.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

### 19.1101 General.

A price evaluation adjustment for small disadvantaged business concerns shall be applied as determined by the Department of Commerce (see 19.201(b)). Joint ventures may qualify provided the requirements set forth in 13 CFR 124.1002(f) are met.

### 19.1102 Applicability.

(a) The price evaluation adjustment shall be used in competitive acquisitions.

(b) The price evaluation adjustment shall not be used in acquisitions that—

(1) Are not greater than the simplified acquisition threshold;

(2) Are awarded pursuant to the 8(a) program; or

(3) Are set aside for small business concerns.

### 19.1103 Procedures.

(a) Give offers from small disadvantaged business concerns a price evaluation adjustment by adding the factor determined by the Department of Commerce to all offers, except—

(1) Offers from small disadvantaged business concerns that have not waived the evaluation adjustment;

(2) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.402;

(3) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(4) For DOD, NASA, and Coast Guard acquisitions, otherwise successful offers from historically black colleges and universities or minority institutions; or

(5) For DOD acquisitions, otherwise successful offers of qualifying country end products (see DFARS 225.000–70 and 252.225–7001).

(b) Apply the factor on a line item basis or apply it to any group of items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the price evaluation adjustment.

(c) Do not evaluate offers using the price evaluation adjustment when it would cause award, as a result of this adjustment, to be made at a price that exceeds fair market price by more than the factor as determined by the Department of Commerce (see 19.202–6(a)).

### 19.1104 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, in solicitations and contracts when the circumstances in 19.1102 apply. The contracting officer shall insert the authorized price evaluation adjustment factor. The clause shall be used with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

## PART 33—PROTESTS, DISPUTES, AND APPEALS

17. Section 33.102 is amended in paragraph (a) by revising the last sentence to read as follows:

### 33.102 General.

(a) * * * (See 19.302 for protests of small business status, and 19.305 for protests of disadvantaged business status.)

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.212–3 is amended by revising the date of the provision; removing the definition of ''Small disadvantaged business concern''; revising paragraph (c)(2); adding (c)(7); and adding Alternate I following ''(End of provision)'' to read as follows:

### 52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

**Offeror Representations and Certifications—Commercial Items (Oct 1998)**

* * * * *

(c) * * *

(2) Small disadvantaged business concern. The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

* * * * *

(7) (*Complete only if the solicitation contains the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, and the offeror desires a benefit based on its disadvantaged status.*)

(i) *General.* The offeror represents that either—

(A) It ☐ is, ☐ is not certified by the Small Business Administration as a small disadvantaged business concern and is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It ☐ has, ☐ has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(7)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [*The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:* _____.]

* * * * *

(End of provision)

*Alternate I (Oct 1998).* As prescribed in 12.301(b)(2), add the following paragraph (c)(8) to the basic provision:

(8) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(2) or (c)(7) of this provision.) [*The offeror shall check the category in which its ownership falls*]:

____Black American.

____Hispanic American.

____Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

____Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

____Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____Individual/concern, other than one of the preceding.

19. Section 52.212–5 is amended by revising the clause date; redesignating paragraphs (b)(6) through (b)(17) as (b)(7) through (b)(18), respectively; and adding a new paragraph (b)(6) to read as follows:

### 52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

**Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (Oct 1998)**

* * * * *

(b) * * *

____(6)(i) 52.219–23, Notice of Price Evaluation

Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) ____Alternate I of 52.219–23.

* * * * *

20. Section 52.219–1 is amended by revising the introductory text of the provision; the provision date and paragraph (b)(2); by deleting the definitions of ''Joint venture'' and ''Small disadvantaged business concern''; and adding an Alternate I to read as follows:

**52.219–1 Small Business Program Representations.**

As prescribed in 19.306(a), insert the following provision:

**Small Business Program Representations (Oct 1998)**

* * * * *

(b) * * *

(2) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

* * * * *

*Alternate I (Oct 1998).* As prescribed in 19.306(a), add the following paragraph (b)(4) to the basic provision:

(4) (Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision). [*The offeror shall check the category in which its ownership falls*]:

____Black American.

____Hispanic American.

____Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

____Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

____Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____Individual/concern, other than one of the preceding.

**52.219–2 [Amended]**

21. Section 52.219–2 is amended in the introductory paragraph by revising ''19.304(b)'' to read ''19.306(c)''.

22. Sections 52.219–22 and 52.219–23 are added to read as follows:

**52.219–22 Small Disadvantaged Business Status.**

As prescribed in 19.306(b), insert the following provision:

**Small Disadvantaged Business Status (Oct 1998)**

(a) *General.* This provision is used to assess an offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219–1, Small Business Program Representation.

(b) *Representations.*

(1) *General.* The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

☐ (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

(A) No material change in disadvantaged ownership and control has occurred since its certification;

(B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(C) It is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

☐ (ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(2)☐*For Joint Ventures.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [*The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:* _____.]

(c) *Penalties and Remedies.* Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall:

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

(End of provision)

**52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.**

As prescribed in 19.1104, insert the following clause:

**Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 1998)**

(a) *Definitions.* As used in this clause—

*Small disadvantaged business concern* means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration;

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

*Historically black college or university* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority institution* means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)) which, for purposes of this clause, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

*United States* means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, and the District of Columbia.

(b) *Evaluation adjustment.* (1) Offers will be evaluated by adding a factor of _____ [*percentage to be inserted by*

*the contracting officer*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;

(ii) For DOD, NASA, and Coast Guard acquisitions, otherwise successful offers from historically black colleges or universities or minority institutions;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government; and

(v) For DOD acquisitions, otherwise successful offers of qualifying country end products (see sections 225.000–70 and 252.225–7001 of the Defense FAR Supplement).

(2) The factor shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

____Offeror elects to waive the adjustment.

(d) *Agreements.* (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

*Alternate I (Oct 1998).* As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

[FR Doc. 98–17197 Filed 6–26–98; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Chapter 1

## Federal Acquisition Regulation; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulatory Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97–06 which amends the Federal Acquisition Regulation (FAR). Further information regarding this rule may be obtained by referring to FAC 97–06 which precedes this document. This document may be obtained from the Internet at http://www.arnet.gov/far.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, (202) 501–4755.

### Reform of Affirmative Action in Federal Procurement

*FAC 97–06/FAR Case 97–004A.* The interim rule amends FAR Parts 1, 12, 14, 15, 19, 33, and 52 to establish a mechanism to benefit small disadvantaged business concerns at the prime contract level. This mechanism is a price evaluation adjustment of up to ten percent in certain Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. This price evaluation adjustment conforms to the Department of Justice proposal to reform affirmative action in Federal procurement and to regulations issued by the Small Business Administration regarding small disadvantaged business programs. This price evaluation adjustment is mandatory for those competitive procurements to which it applies. It does not, however, apply to several major categories of acquisition, including, for example, acquisitions within the simplified acquisition threshold, acquisitions set aside for small business, and acquisitions conducted pursuant to the 8(a) program.

Dated: June 23, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 98–17198 Filed 6–26–98; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Parts 121, 124, and 134

## Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) amends both the eligibility requirements for, and contractual assistance provisions within, the SBA's 8(a) Business Development (8(a) BD) program. This final rule changes the name of the program from the Minority Small Business and Capital Ownership Development program to the 8(a) BD program to better reflect the purpose of the program. This rule streamlines the operation of the 8(a) BD program, eases certain restrictions perceived to be burdensome on Program Participants, clarifies certain eligibility requirements, and deletes obsolete regulations.

**DATES:** *Effective Date:* This rule is effective on July 30, 1998.

*Compliance Dates:* Subpart A applies to all applications for the 8(a) Business Development program pending as of July 30, 1998 and all 8(a) procurement requirements accepted by SBA on or after July 30, 1998. These rules do not apply to any appeals pending before SBA's Office of Hearings and Appeals. The revisions to 13 CFR part 121 apply with respect to all solicitations issued on or after June 30, 1998. Except for 13 CFR 134.408(c), the procedural revisions to 13 CFR part 134 apply to all appeals served or filed on or after June

30, 1998. 13 CFR 134.408(c) applies as of the publication to all pending appeals before SBA's Office of Hearings and Appeals.

**FOR FURTHER INFORMATION CONTACT:** William A. Fisher, Acting Associate Administrator for Minority Enterprise Development, at (202) 205–6412.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a Memorandum to federal agencies, directing them to simplify their regulations. In response to this directive, SBA completed a page-by-page, line-by-line review of all of its then existing regulations to determine which might be revised or eliminated. Revisions to 13 CFR Part 124 awaited a review by the Department of Justice (DOJ) of all Federal procurement affirmative action programs. On May 23, 1996, DOJ published in the **Federal Register** a comprehensive proposal for tailoring affirmative action programs in the Federal procurement arena (*see* 61 FR 26042), and on May 9, 1997 the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration proposed amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business (SDB) concerns. In response to and in conjunction with the DOJ and FAR reform proposals, on August 14, 1997, SBA published in the **Federal Register**, 62 FR 43584, a proposed rule to amend 13 CFR part 124. Subpart A of the proposed part 124 dealt with changes pertaining to the 8(a) Business Development (8(a) BD) program which is authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a). Subpart B of proposed part 124 dealt with SBA's role in the certification and protest of small disadvantaged businesses, as contemplated by the DOJ and FAR proposals. During the proposed rule's 60-day comment period, SBA received 95 timely comments, the majority of which favored the proposed changes. This rule finalizes subpart A of 13 CFR part 124 (its regulations relating to the SBA's 8(a) Business Development Program. SBA continues to consider issues relating to subpart B of 13 CFR part 124, and will finalize those regulations at a later time. This rule does not address any comments made regarding subpart B of part 124 or SBA's response thereto.

A substantial number of commenters applauded SBA's effort to remove duplicative provisions, and rewrite those that appeared wordy or unclearly written. For the most part, the comments also supported the substantive changes proposed by SBA. SBA received comments on many aspects of the proposed rule. With the exception of comments which did not set forth any rationale or make suggestions, SBA discusses and responds fully to all the comments below.

In addition to the changes to 13 CFR part 124, the final rule also makes changes to SBA's size regulations (part 121) to permit size protests and appeals of Standard Industrial Classification (SIC) code designations in connection with 8(a) competitive procurements, and to exclude certain joint venture arrangements from SBA's affiliation rules. These changes should increase the potential pool of small businesses available to compete for particular procurements and should encourage contracting officers to consider small business contractors more closely before determining a procurement strategy. The final rule also transfers the procedures relating to certain statutorily authorized appeals in the 8(a) program from part 124 to part 134 of 13 CFR.

This final rule streamlines the operation of the 8(a) BD program, eases certain restrictions perceived to be burdensome on Participants, amends certain eligibility procedures, and deletes obsolete regulations. It reorganizes the regulations into identifiable substantive areas for ease of use and clarity. It also changes all references to SBA's Office of Minority Small Business and Capital Ownership Development to the Office of 8(a) Business Development to emphasize that individuals participating in the program need not be members of minority groups and to stress the importance of assisting participating firms in their overall business development.

SBA has attempted to rewrite the regulations in plain English wherever possible. To this end, SBA has written section headings in question format for ease of use, and has eliminated unnecessary verbiage from the regulations.

This rule amends eligibility procedures for admission to the 8(a) BD program and also amends contractual assistance provisions within the 8(a) BD program. It eliminates the requirement that a Participant must have specified SIC codes approved by SBA in its business plan in order to be eligible for 8(a) contracts, establishes consistent remedial measures for firms that do not meet their non-8(a) business activity targets, eases certain joint venture restrictions, and establishes a mentor/protege program for developing 8(a) Participants. This rule also liberalizes the standard of review for non-group members seeking disadvantaged status from a clear and convincing evidence test to a preponderance of the evidence standard.

**Summary of Comments and SBA's Response**

*Part 121:* SBA received a substantial number of comments agreeing with SBA's proposal to exclude certain joint venture arrangements from the normal affiliation rules. This provision will encourage contracting officers to use small business contractors to a greater extent. With the consolidation of procurements becoming an increasing reality, some contracting officers may feel that requirements are too big for a small business to perform successfully. The proposed rule would have permitted two or more small business concerns to joint venture for a particular procurement and be considered a small business concern so long as each concern individually was small. Several commenters recommended that this provision be broadened to exclude affiliation rules where there are ''teaming'' agreements as well. SBA concurs with this recommendation, and has changed the rule accordingly.

*Part 124, subpart A:* Most of the comments received by SBA focused on subpart A of part 124. The following analysis discusses each of the significant comments received.

The proposed rule contained no provision for reporting changes that would adversely affect a firm's eligibility, either during the application stage or during a Participant's tenure in the program. As a result of a number of comments, several new provisions have been included in the regulation. Section 124.2 requires, in part, that a Participant must maintain its program eligibility throughout its tenure in the program and is obligated to inform SBA of any changes that would adversely affect its program eligibility. To continue a firm's participation in the program, § 124.112 specifically reasserts this obligation and § 124.112(b)(2) requires program Participants as part of their annual review to represent that no adverse change occurred or, in the alternative, to describe any adverse changes that have occurred. During the application stage, the 8(a) applicant is obligated to inform SBA of any adverse changes that may have occurred since the actual application.

Section 124.103(c) of the proposed rule stated that individuals who are not members of designated socially disadvantaged groups must establish individual social disadvantage by a ''preponderance of the evidence.''

Previously, individuals not members of a designated group needed to prove individual social disadvantage by ''clear and convincing'' evidence. SBA received many comments regarding the proposed change in the evidentiary standard. The majority of commenters did not favor changing the standard. SBA believes that all individuals who can show that they have personally suffered social disadvantage, including women and handicapped individuals, should be admitted to the 8(a) BD program, and that the change in the evidentiary standard is necessary for constitutional reasons. In response to the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 115 Sup. Ct. 2097 (1995), which requires programs to provide a race-based remedy to be ''narrowly tailored,'' the Department of Justice recommended the ''preponderance of the evidence'' standard for government-wide disadvantaged business programs. SBA based the ''preponderance of the evidence'' standard on the Department of Justice proposal, and continues to believe that the use of this standard strengthens the defense of the 8(a) BD program. Therefore, SBA retains the ''preponderance of the evidence'' standard in the final rule. While the criteria for a case of individual social disadvantage remains basically the same, the final rule changes the evidentiary standard that must be shown to demonstrate an individual case of social disadvantage. In assessing a claim of individual social disadvantage, SBA will consider all relevant information submitted by an applicant. Evidence which tends to show generalized patterns of discrimination against a non-designated group or statistical data showing that businesses owned by a specific non-designated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.

Proposed § 124.103(d) stated that representatives of an identifiable group whose members believe that the group has suffered chronic racial or ethnic prejudice or cultural bias may petition SBA to be included as a group presumed to be socially disadvantaged. One commenter asked what the evidentiary standard should be for approval of a designated group. As a result of this comment, § 124.103(d)(1) of the final rule provides that a preliminary showing must be made that substantial evidence exists that a group meets the criteria to be determined presumptively socially disadvantaged. Once this showing is made, SBA will publish a notice for comment and, where deemed appropriate, hold hearings and/or conduct its own research. After completion of the process, SBA will determine whether a preponderance of the evidence shows that the group meets the necessary criteria to be considered presumptively disadvantaged.

Proposed § 124.104, which set forth the factors to be reviewed to determine the economic status of socially disadvantaged individuals, clarified that a contingent liability does not reduce an individual's net worth. A commenter remarked that contingent liabilities reduce capital and credit opportunities and should be considered as reducing net worth. SBA understands this possibility, but does not adopt the comment. There are wide varieties of contingencies and their impacts on credit opportunities. Moreover, individuals should not be permitted to satisfy the net worth criterion by offering guarantees and indemnities with remote possibilities of becoming actual liabilities.

Another commenter felt that § 124.104 needed to set forth in greater detail the criteria SBA uses to determine whether an individual is economically disadvantaged. SBA will study this issue for possible later revision.

Another commenter suggested that under § 124.104, review of the financial status of individuals claiming economic disadvantage should be performed going back two years prior to application. This is already addressed in two subsections of this section and no further provisions are needed. Proposed § 124.104(c) provides that SBA will take into account the individual's personal income for the previous two years. Proposed § 124.104(c)(1) provides that SBA will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a or beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the 8(a) BD program or within two years of a Participant's annual program review, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

One commenter expressed concern that transfers of assets to family members within two years prior to application should be objectionable even if the transfer was ''for fair market value.'' The commenter felt that sham transfers would be made to enable individuals to qualify as economically disadvantaged under the thresholds. SBA has not adopted this comment since, if a transferee received fair market value for an asset, the transfer would be a sale, not a sham. As such, the transfer would not distort a calculation of the transferor's net worth.

SBA had specifically requested comments on proposed § 124.105, seeking input on whether and under what circumstances trust arrangements might be considered permissible without violating the statutory requirement that an applicant or Participant must be at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals. SBA received several comments on this issue. Upon further reflection, SBA has determined that ownership of an 8(a) applicant or Participant by trusts that are the functional equivalent of individuals, like living trusts, are tantamount to individual ownership and should be permitted in the program. One commenter noted that the IRS treats living trusts as individuals for the purposes of income tax calculation, and urged SBA to do the same. The SBA recognizes that an increasing number of entrepreneurs are using such vehicles for tax and estate planning purposes. Therefore, a provision making certain trusts eligible for 8(a) participation has been included in § 124.105(a). The new provision states that an 8(a) BD concern owned by a trust is considered to be directly owned by a disadvantaged individual if the trust is revocable and the disadvantaged individual is also the grantor, a trustee and the sole current beneficiary of the trust.

Section 124.105(h) of the proposed rule set forth certain ownership restrictions for non-disadvantaged individuals and concerns. Proposed § 124.105(h)(1) stated that a non-disadvantaged individual or a non-Participant concern that owns a 10 percent or greater interest in a Participant as a general partner or stockholder may not own more than a 10 percent interest in another Participant. Proposed § 124.105(h)(2) stated that a non-Participant concern in the same or similar line of business may not own more than 10 percent in a current Participant, and a former

Participant in the same or similar line of business may not own more than 20 percent in a current Participant. Five commenters disagreed with these restrictions. They felt they were unnecessary and would place extra burdens on 8(a) firms that non-8(a) firms do not have. Most felt that if SBA determines that the firm is 51 percent owned, managed and controlled by a disadvantaged individual, no other ownership restrictions should apply. Two commenters pointed out that the regulation as proposed would hinder the firm's access to capital. The commenters pointed out that access to money is necessary to make the transition into the competitive market place. In response to these comments, the SBA has revised its regulations to raise the percentages that non-disadvantaged individuals, non-disadvantaged firms and former 8(a) firms may own in an 8(a) Participant in the transitional stage of program participation. With respect to a firm in the transitional stage of 8(a) program participation, the final rule states that (1) a non-disadvantaged individual or a non-Participant concern with at least a 10 percent ownership interest in another Participant may own up to a 20 percent interest; (2) a non-disadvantaged individual or concern in the same or similar line of business may own up to a 20 percent interest; and (3) a former 8(a) Participant may own up to a 30 percent interest. Percentages of ownership for firms in the developmental stage of program participation are not changed in this rule. SBA's decision to ease the current restrictions on ownership of an 8(a) BD concern should improve access to sources of capital. SBA decided not to raise the percentages higher than 20 and 30 percent at this time due to its continued concern over program abuse through the possible establishment of fronts. SBA will continue to monitor this section of the rule and may adjust the percentages further in the future if it deems it appropriate to do so.

Section 124.105(i) contains standards for obtaining SBA approval of a change in a Participant's ownership. Several commenters expressed concern that a time limit should be imposed on SBA to approve or decline change of ownership requests. The final rule provides that the AA/8(a)BD will issue a decision within 60 days of receipt by the Agency of a request containing all necessary documentation, and that the decision of the AA/8(a)BD will be the final Agency decision. The final rule further provides that the denial of a request for a change of ownership may be grounds for program termination if the change is nonetheless completed.

The preamble to the proposed rule solicited comments on a proposal to use suspension as a tool to allow time for an SBA inquiry into a Participant's change of ownership or control. No negative comments were received relating to this issue. Commenters who did address the matter approved of such use, providing that SBA would restore the length of the suspension to the firm's program term if the change is ultimately approved. As a result of the comments, SBA has revised § 124.105(i). As revised, § 124.105(i) provides that, where a Participant requests a change of ownership or business sture, and the che change has already occurred, SBA will suspend the Participant pending a decision on the request. If the change is approved, the SBA will restore the length of the suspension to the Participant's program term where the change in ownership results from the death or incapacity of a disadvantaged individual, or where the firm requested prior approval and waited 60 days for SBA approval before making the change. SBA will not restore the length of a suspension for any firm that did not request a change in ownership prior to making the change (except, as noted, for a change due to death or incapacity). This provision has also been added to § 124.305 governing suspensions.

The proposed regulation regarding suspension (§ 124.305) has been modified to clarify the jurisdiction of the Office of Hearings and Appeals and the standard of evidence necessary for SBA to sustain its suspension action. The proposed rule stated that SBA has the burden of showing that ''substantial'' evidence exists in support of at least one of the grounds for termination cited in the Letter of Intent to Terminate. SBA has decided not to adopt this new standard in the final rule. The final rule provides that SBA is required to show only that ''adequate'' evidence exists in support of a least one of the grounds for termination. The final rule defines the term ''adequate evidence'' as information sufficient to support the reasonable belief that a particular act or omission has occurred. This definition is adopted from § 9.403 of Title 48 of the Code of Federal Regulations.

Section 124.305 has also been amended to provide that, unless the Administrative Law Judge consolidates the suspension and termination proceedings, the review must be limited to determining whether the government's interest needs protection. SBA's Office of Hearings and Appeals (OHA) may not review the grounds for termination under a suspension action.

A commenter questioned whether proposed § 124.105(i) conflicts with the requirement in § 124.515 that a change in ownership of an 8(a) BD concern requires a waiver from SBA for the Participant to continue performing on an 8(a) contract. Section 124.105(i) allows continued performance of a contract without a waiver if a disadvantaged individual is substituted for another, with SBA approval before the change is implemented. SBA requires waivers under § 124.515 only where ownership of an 8(a) Participant would be changed to an extent that the 8(a) BD concern would be no longer at least 51 percent owned by one or more disadvantaged individuals. If SBA does not approve a change in ownership because it determines that the acquiring individual is not disadvantaged or that the firm as structured after the change is no longer owned and controlled by disadvantaged individuals, then the firm must seek a waiver under § 124.515 in order to continue to perform any of its 8(a) contracts.

Proposed § 124.106 explained the concept of control and the factors which SBA looks at to determine who controls an 8(a) BD concern. Several commenters raised issues of control where a non-disadvantaged individual held a critical license. SBA does not believe that the mere fact that a non-disadvantaged employee who is not also an equity owner of the firm holds a critical license would cause the disadvantaged principal(s) to lose control. In such a case, the disadvantaged principal(s) must demonstrate their management expertise and the right to replace the non-disadvantaged employee at any time with another technical employee. However, SBA agrees that the situation is much more complicated where the non-disadvantaged individual who holds a critical license is also an equity owner of the firm. The final rule permits SBA to find negative control where a non-disadvantaged owner holds a critical license. The burden is on the applicant or Participant to demonstrate that control is in the hands of one or more disadvantaged individuals. The final rule provides that an individual need not have the technical expertise or possess a required license to be found to control an applicant or Participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. SBA recognizes that failure to possess technical expertise or a required license are factors that may be considered in evaluating the disadvantaged

individual's control of the concern, but that such circumstances are not dispositive.

One commenter suggested that 8(a) concerns be allowed to own subsidiary concerns without being in violation of the requirement under proposed § 124.106(a)(3) that an owner of an 8(a) concern devote full time to management of the concern. SBA's policy is to allow such ownership since working with the subsidiary indirectly advances the interests of the 8(a) concern. Therefore, a provision expressly allowing such ownership has been added to § 124.106(a)(3). However, this exception does not change the general requirement that an owner of an 8(a) concern devote full time to manage the concern.

A few commenters requested that some flexibility be given to the requirement under § 124.106(a)(3) that a disadvantaged individual who manages the Participant concern must devote full-time to the business during normal working hours. As stated in the preamble to the proposed regulations, this requirement is not intended to prevent such individual from spending normal business hours away from the premises in such areas as marketing and outreach that benefit the concern. The rule does not imply that business activities could not be conducted by such individual outside the office. It does, however, prohibit such individual from being physically located at a site on a continuing basis which is separate and distinct from the Participant concern during normal business hours, despite any claim that he or she is managing the concern from that location. SBA believes it is important for the growth and development of the 8(a) BD concern that the disadvantaged individual who manages the concern devote full time to such management. Therefore, SBA makes no change to the final rule.

The proposed regulations continued SBA's current approach and required that disadvantaged individuals have majority control of the board of directors. Some commenters felt that this requirement did not reflect business practice in the corporate world. One commenter felt that, particularly in smaller corporations, the sole shareholder or the majority shareholder virtually always controls the board of directors. This control stems from his or her ability to replace directors at will. The commenter recognized, however, that in rare situations the sole or majority owner might not control the board, such as where directors have fixed terms and cannot be removed before the end of such terms. In addition, SBA notes that cumulative voting practices and super majority requirements (i.e., any provisions requiring more than a simple majority vote) may make it difficult for a shareholder owning only 51% of a corporate concern to control the board of directors of that concern. Likewise, where more than one disadvantaged owner is involved, voting rights and control of the board of directors is harder to pinpoint. As such, SBA accepts this comment to a point. The final rule gives several alternatives for finding control by disadvantaged individuals of the board of directors. Where a single disadvantaged individual owns 100% of an applicant or Participant, SBA deems that individual to control the board of directors, and no further analysis is needed. Where a single disadvantaged individual owning less than 100% seeks to qualify a concern, SBA deems that individual to control the board of directors where he or she owns at least 51% of the concern or, where the concern has super majority voting requirements, that percentage of ownership needed to overcome any such super majority ownership requirements, and he or she is on the board of directors. The applicant will be required to inform SBA of any super majority voting requirements provided for in its articles of incorporation, its by-laws, or by state law. Thus, the disadvantaged owner is able to convene a shareholder's meeting, change corporate by-laws and articles of incorporation, and change directors on the board at will. In such a case, SBA will not look at the makeup of the board of directors for determining control of the firm (although SBA will continue to examine the character of directors). Where more than one disadvantaged owner seeks to qualify an applicant or Participant (i.e., no one individual owns 51%) and each such individual is on the board of directors, SBA deems those individuals to control the board of directors where together they own at least 51% of the concern or, where the concern has super majority voting requirements, that percentage of ownership needed to overcome any such super majority ownership requirements, and they can demonstrate that they have made arrangements to overcome any potential stalemates and that they have the comparable ability of a single majority owner to act quickly. For example, where a concern has three disadvantaged individuals each owning 17%, SBA will deem the individuals to control the board of directors without looking at the board's make-up if two of the three individuals have given their voting rights to the third individual. Where an applicant or Participant cannot demonstrate the ability for a disadvantaged individual to act quickly to replace members of the board of directors, SBA will look at the composition of the board of directors and will apply the current board of directors control requirements to the concern. The concern must meet the current requirement that one or more disadvantaged individuals must control the board of directors through numbers of individuals on the board or, where permitted by state law, through weighted voting.

Numerous commenters expressed concern that, with the lowering of the evidentiary standard for eligibility in cases of individual social disadvantage, there would be a greater need to police fraud in the program application process. Many warned of potential front situations involving the transfer of ownership and/or control of the applicant firm from one family member to another. This final rule addresses these issues at several points. Section 124.106(f) provides that if a non-disadvantaged individual transfers majority ownership or control of the applicant firm to a family member within two years of the date of application while remaining an owner, officer, director or key employee of the company, the non-disadvantaged individual will be presumed to control the company. As noted above, the final rule also requires program applicants (§ 124.204(d)) and Participants (§ 124.112(b)) to inform SBA of any changes that would adversely affect their eligibility. Failure to inform SBA of these adverse changes, or falsely certifying that no adverse changes exist, are grounds for denial of entry into the program or, if concern is a already a program Participant, grounds for termination from the program.

Proposed § 124.107 set forth the requirement that an 8(a) BD applicant must possess potential for success in competing in the private sector. One commenter questioned whether an 8(a) applicant that can meet the requirements under § 124.107(b)(iii) and (iv), needs 8(a) BD assistance. These subsections provide that if an applicant to the 8(a) BD program does not meet the requirement that it has been in business in its primary industry classification for at least two full years prior to applying, this requirement may be waived if certain conditions are met. In 1990, Congress passed legislation that would allow concerns to waive the two year rule after satisfying five conditions. *See* The Small Business Administration Reauthorization and Amendments Act

of 1990, Pub. L. No. 101–574 § 203(b)(1), 104 Stat. 2814, 2818–2819 (1990). SBA adopted the same five conditions for waiver in the 8(a) regulations, but has clarified that applicants will be assessed in the context of their proposed participation in the program.

As indicated above, several commenters expressed a need for greater oversight by SBA during the application process to prevent fraud. SBA notes that provisions included in the proposed regulations at § 124.108(a)(5) provide that SBA may decline an application due to the submission of false information. SBA may also terminate a firm from the program under § 124.303(a)(1)(15) if it discovers later that the Participant falsified information in its application. SBA retains these provisions in the final rule.

Proposed § 124.108(a) provided that SBA could exclude firms from program participation for lack of good character in circumstances where there was credible evidence of criminal activity. Upon further internal deliberation, the final rule significantly expands and clarifies § 124.108(a). SBA will also find a firm ineligible for the 8(a) BD program if it or one of its principals (1) lacks integrity as demonstrated by information related to an indictment, guilty plea, conviction, civil judgment or settlement; (2) is currently incarcerated, or on parole or probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity; or (3) has knowingly submitted false information as part of the application for program admission. This clarification and expansion of the definition of good character reinforces the concept of business character as a requirement for program eligibility. It also promotes greater consistency between the eligibility requirements in this section and the grounds for termination in § 124.303(a).

Several commenters believed that payment of obligations to the Federal government should be included as an element of good business character under § 124.108(a). Failure to pay significant obligations owed to the Federal Government is already a basis for program termination under § 124.303(a)(11). Additionally, the existence of defaults resulting in a loss on a federal loan or federally assisted financing has long been a reason for denying financial assistance in other SBA programs. *See* 13 CFR § 120.110. For these reasons, SBA has added a new paragraph (e) to § 124.108, providing that any firm or principal that fails to pay significant financial obligations owed to the Federal Government is not eligible for admission to the 8(a) BD program.

Section 124.108(f) of the proposed rule defined a ''broker'' as a concern that adds no value to an item being supplied to a procuring activity. One commenter suggested that the definition of broker be expanded to provide that a company would not be considered a broker if it purchased and shipped an item, despite the fact that purchasing and shipping do not technically ''add value'' to an item. SBA concurs that the proposed language did not adequately capture the meaning of the term ''broker.'' SBA has, therefore, added language to § 124.108 to refine the definition of a broker. The final rule (§ 124.108(d)) provides that a broker is a concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities. This definition of ''broker'' is specific to this rule. Some firms which refer to themselves as brokers in their line of business may not be ineligible for 8(a) participation as ''brokers'' under this rule.

The final rule also clarifies the provision restricting a tribe's (or an ANC's) ability to own more than one firm in the 8(a) program doing the same work. Section 124.109(c)(3)(ii) specifies that a tribe may own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the tribe operates in the 8(a) BD program as its primary SIC code. In other words, SBA will not deny an application from a tribally-owned concern where the application plans to do some work (but not its primary work) in the same SIC as another 8(a) firm owned by the tribe. The final rule makes this same clarification for CDCs and Native Hawaiian Organizations as well. *See* §§ 124.110(c) and 124.111(d), respectively.

Proposed § 124.112 listed the criteria Participants must meet in order to remain eligible for the 8(a) BD program. One commenter suggested that if SBA determines that a Participant is no longer eligible for the 8(a) BD program under § 124.112, that the Participant be allowed to respond to the factors supporting ineligibility even before SBA initiates early graduation or termination proceedings under § 124.302 and § 124.303, respectively. If SBA initiates such proceedings, the Participant now has 30 days to respond to SBA under § 124.304(b). SBA believes these procedures give the Participant an adequate opportunity to respond on the issue of continued eligibility.

Another commenter recommended that a Participant which obtains an SBA loan should not thereby be considered to have ''access to credit'' under § 124.112 such that the socially disadvantaged individuals are no longer considered economically disadvantaged. Since this is already SBA's policy, no change to the regulation is necessary.

One commenter felt that requiring certification of the transfer of assets to family members under § 124.112(b)(4) would penalize individuals for making gifts to their families and would serve no legitimate purpose. SBA does not intend that each disadvantaged owner report every gift made to his or her family members. SBA is merely trying to determine if an individual has transferred significant assets to his or her family members in order to remain eligible for the program (i.e., in order to remain ''economically disadvantaged''). Where the individual retains some use or enjoyment of the asset transferred (e.g., real estate is ''transferred'' to a spouse and the individual continues to have access to it; a piece of art is ''transferred'' to a family member, but continues to be displayed in the individual's residence), SBA will attribute the asset back to the disadvantaged individual for purposes of determining his or her continued economic disadvantage status. Where the individual demonstrates that the transfer is an irrevocable transfer as to which the disadvantaged individual retains no use or enjoyment (e.g., the one-time transfer of funds to an adult child to assist the child's purchase of a residence), the asset will not be attributed back to the disadvantaged individual. In addition, § 124.104(c)(1)(ii) of the final rule specifies that SBA will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements. This does not mean that an individual claiming disadvantaged status may transfer unreasonably large funds or other assets to an immediate family member and claim that it should not be attributed back to him or her because the transfer was, for example, a birthday present. The funds or assets transferred must be reasonable and within customary limits for the occasion.

Another commenter suggested that SBA also attribute back to the disadvantaged transferor all transfers to

non-family members for less than fair market value. SBA does not adopt this suggestion. Such a rule could discourage, for example, an irrevocable charitable transfer of assets. SBA notes that if an asset is transferred subject to a retained interest or a remainder, then the present value of the retained interest will continue to be counted as an asset in determining the donor's net worth. As such, there is no need to impose further restrictions or requirements on these transfers.

A few commenters noted that language in proposed § 124.112, concerning the continuing eligibility of businesses in the 8(a) BD program, inadvertently requires concerns owned by Alaska Native Corporations (ANCs) to comply with §§ 124.101 through 124.108. SBA has revised § 124.112 to correct this error. In addition, this section has been revised to address the continuing eligibility of concerns owned by Indian tribes, Native Hawaiian Organizations and Community Development Corporations (CDCs).

With respect to the new mentor/protege program, one commenter suggested that SBA should measure the performance of the mentor and benefits of the program. SBA has adopted this suggestion by revising § 124.112(b) to require from protege firms a narrative report on the program as part of their annual report. SBA has also revised § 124.520 to provide specific standards for SBA reviews of mentor/protege relationships.

Proposed § 124.112(c) set forth examples under which SBA may determine that a socially disadvantaged individual is no longer economically disadvantaged. One commenter noted that the proposed rule referred to the economic status of the 8(a) BD Participant, rather than the disadvantaged individual. This error has been corrected in the final regulations, and language has been added to clarify that the economic status of the Participant may be considered in analyzing the status of the individual.

Proposed § 124.204 set forth the process of applying to the 8(a) BD program. Proposed § 124.204(b) stated that eligibility for the program is based on the circumstances existing on the date of application, but that SBA may request clarification of information in the application. Several commenters felt that this was too harsh and that concerns which might easily be eligible for the program would not be allowed the chance to make simple changes in order to be eligible. While SBA understands the desire an applicant would have to be able to change its application at any point in time in order to come into compliance with SBA's requirements during the application process, SBA believes that it is more important for reviewers not to have an application that is an ever-changing moving target. In addition, SBA notes that the applicant still has its right to request reconsideration of an initial decline letter and it is free to make any changes in its application at that time.

Proposed § 124.302 of the regulations set forth the criteria for early graduation. A Participant could be graduated early if it either successfully completes the program prior to the end of its program term or if one or more of the disadvantaged owners are no longer economically disadvantaged. Some commenters felt that successful firms would be penalized for their success if they were graduated before the expiration of their 9 year term. Although SBA is authorized to graduate firms that meet their business objectives early, this process is at the discretion of the Administrator. Early graduation is not an automatic process. Only Participants that show sufficient competitive strength and viability to compete successfully outside the program will be subject to early graduation. Once they show such strength and viability, their need for continued participation in the program has ended. Accordingly, SBA has retained these provisions in the final rule.

One commenter suggested that SBA should graduate Participants early when the Participants have demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program, whether or not they have achieved the targets, goals and objectives set forth in their business plans. SBA believes that this recommendation is contrary to the Small Business Act. The Small Business Act authorizes SBA to graduate Participants early only under limited circumstances, among them where a Participant has successfully completed the program by substantially achieving its targets, goals and objectives. SBA understands the concerns of the commenter, and will take efforts to ensure that the targets, goals and objectives in the business plans are realistic and appropriate.

Section 124.303(a) of the proposed rule provides for early termination from the 8(a) program prior to the expiration of a concern's Program Term for good cause. Section 124.303(a)(13) lists, as an example of good cause, excessive transfers of funds or other business assets hindering development of the concern, and excessive withdrawals from the concern for the personal benefit of any of its owners or any entity affiliated with the owners. Several commenters were concerned with SBA labeling withdrawals ''excessive'' without reviewing the totality of the circumstances. Section 124.112(d)(3) defines as excessive those withdrawals during any one fiscal year of a Participant that exceed $150,000 for firms with sales up to $1,000,000; $200,000 for firms with sales between $1,000,000 and $2,000,000; and $300,000 for firms with sales over $2,000,000. The regulation permits SBA to terminate the concern for good cause for such withdrawals. However, it does not state that SBA will automatically terminate the concern. SBA realizes that some withdrawals above the ''excessive'' guidelines are not excessive in light of the totality of the circumstances. SBA decides terminations on a case-by-case basis and always considers the totality of the circumstances beforehand. Nonetheless, the final rule clarifies that SBA will presume to be excessive all withdrawals exceeding the specified amounts.

The final rule changes § 124.303 to add clarity and to eliminate redundancy. Proposed § 124.303(a)(18) stated that a suspension or revocation of any license required to run the business is good cause for termination. SBA has deleted this paragraph and transferred its substance to § 124.303(a)(12). Section 124.303(a)(12) of the final rule now lists as a ground for termination the failure to keep licenses, charters and permits current.

SBA received several comments concerning the application of benchmarks to the 8(a) BD program. This application is based on the DOJ review of Federal procurement affirmative action programs and the Government-wide SDB program. Because this rule is not finalizing SBA's implementation of the SDB program at this time, it eliminates all references to benchmarks from the 8(a) regulations (i.e, subpart A).

SBA has changed many of the 8(a) contracting sections as a result of the comments. It has amended the general provisions in proposed § 124.501 in several respects. The final rule eliminates proposed paragraph (d) of § 124.501 as unnecessary, and renumbers proposed paragraphs (e) and (f) as paragraphs (d) and (e) respectively. That paragraph had clarified that a concern's success in meeting its support level would not preclude future 8(a) BD contract awards. Although SBA thought this clarification necessary at the time the regulations were originally amended to permit 8(a) concerns to exceed their support levels, SBA believes that that need no longer exists.

One commenter requested clarification concerning the purpose of delegating contract execution authority. The primary purpose behind such delegation is improved efficiency. Procuring activities can award contracts much more quickly and efficiently with such authority and may, therefore, see more opportunities for making use of the 8(a) BD program.

A sentence was added to proposed § 124.501 to provide that, where practicable, simplified acquisition procedures should be used for 8(a) contracts at or below the simplified acquisition threshold. This change conforms SBA's regulations to the Federal Acquisition Regulation (FAR) governing simplified acquisition procedures (48 CFR Part 13) and promotes efficiency and economy. SBA has also amended its rule, including § 124.501(e), to change the term ''procuring agency'' to ''procuring activity,'' thus identifying correctly the Government contracting entity referenced. Since Federal contracting is frequently performed at the sub-Agency level, using the term ''procuring agency'' did not cover every entity that may enter into an 8(a) contract.

As a result of the comments, SBA added a new paragraph (f) to provide that an 8(a) Participant that identifies a requirement should request SBA to contact the procuring activity to request that the requirement be offered to the 8(a) program.

Proposed § 124.502 addressed offers of procurements to the 8(a) BD Program. SBA has amended its proposed § 124.502(a) to provide that a procuring activity may transmit an offering letter to SBA by electronic mail, if available, or by facsimile transmission, mail or commercial delivery service. This conforms the rule to the simplified acquisition procedures contained in the FAR and helps ensure that procuring activities can award small contracts expeditiously. SBA has amended its proposed § 124.502(b) to provide that, in cases where performance of a construction contract is to take place overseas, the contract should be offered to the Office of 8(a) BD located in SBA Headquarters.

One commenter asked why SBA verified the size of an 8(a) concern prior to accepting a sole source contract on its behalf since self-certification is accepted in every other case. SBA performs this function for sole source awards since there is no mechanism in place for protesting a concern's size in reference to a sole source award. Thus, there is no other check to ensure that concerns in line for award of sole source contracts are in fact small for such contracts. Moreover, since sole source awards are significant benefits, enabling firms to receive contracts without having to compete with other firms, it is particularly important that eligibility, including size, is verified.

Proposed § 124.503 set forth the procedures for accepting a requirement for the 8(a) BD Program. This rule amends § 124.503(a) to provide that, where a contract is valued at or below the simplified acquisition threshold, SBA will accept or reject the requirement within two days of receipt of the offer. In cases where the offer is made on behalf of a particular Program Participant, if SBA does not accept or reject the requirement or request an extension within two days, the procuring activity may assume that the offer has been approved and go forward with the award. SBA intends this change to conform to the simplified acquisition procedures contained in Part 13 of the FAR and to promote efficiency. This final rule also makes a significant change to promote efficiency where SBA has delegated its 8(a) contract execution functions to an agency and a procuring activity within that agency has a procurement requirement whose value is less than the Simplified Acquisition Procedures (SAP) threshold amount. In such case, this rule authorizes SBA, in its discretion, to permit the procuring activity to award an 8(a) contract under the SAP threshold amount without sending an offering letter to SBA and without receiving SBA's official acceptance of the requirement for the 8(a) program.

A number of comments requested clarification of the treatment of multiple award and federal supply schedule contracts. SBA has added a paragraph to § 124.503 setting forth the standards to be applied to these types of contracts. Since, unlike Basic Ordering Agreements (BOA's), multiple award schedule contracts and federal supply schedule contracts are contracts, a new task order under such a contract will not require a new offer and acceptance. Likewise, if a concern qualifies for award of a multiple award schedule or federal supply schedule contract in terms of eligibility and size, it will not be denied future task orders on that contract if it subsequently grows large. Finally, if a multiple award schedule or federal supply schedule contract was competed when awarded, subsequent task orders under such contract will not require further competition under § 124.506.

As a result of the comments, SBA has added a new paragraph (i) to clarify that where SBA has delegated its 8(a) contract execution authority to a procuring activity, the procuring activity must still offer and SBA must accept all requirements intended to be awarded as 8(a) contracts. The only exception to the normal offer and acceptance process is that identified above where a procurement requirement is less than the SAP threshold amount and SBA has specifically authorized (through the Memorandum of Understanding delegating its contract execution functions or otherwise) a procuring activity to dispense with offer and acceptance.

Proposed § 124.504 set forth the circumstances limiting SBA's ability to accept a procurement for award as an 8(a) contract. In response to comments identified below, this final rule specifically authorizes the use of SAP in connection with 8(a) contract awards, and requires SBA to review offering letters for requirements under SAP in an expedited two-day time frame. In order to meet this quick acceptance turn around, SBA has decided not to consider adverse impact in connection with a requirement offered under SAP. It is not feasible for SBA to obtain current financial statements from affected small businesses and to make adverse impact determinations within two days. However, because the SAP threshold is $100,000, SBA believes that adverse impact should not be a real factor with these smaller contracts, and that this change should not have a harmful effect.

Proposed § 124.504(e) (§ 124.504(d) in the final rule) concerned the release of a procurement for non-8(a) competition. One commenter pointed out that the language in proposed § 124.504(e)(3) was misleading. That language provided that if SBA declines to accept an offer and releases the requirement, it will recommend to the procuring agency that the requirement be procured as a small business or SDB set-aside. The commenter correctly pointed out that SDB set-asides are not authorized at this time. SBA has, therefore, amended this paragraph to provide that if SBA declines to accept an offer for the 8(a) program, it will recommend that the requirement be procured as a small business or, if authorized, SDB set-aside.

One commenter suggested that industries for which SBA has elected not to accept requirements should be listed on SBA's website. SBA is considering adopting this idea; however, it need not revise its regulations to adopt this policy. Another commenter recommended that firms that have graduated be permitted to compete for follow-on contracts where the firm had been awarded the original

contract. Applicable law precludes SBA from making this change.

A number of commenters requested additional procedures to protect the rights of small firms which could be adversely impacted by a decision to accept an award for the 8(a) BD program. SBA carefully considered these comments and weighed them against the need of procuring activities for prompt award of contracts. SBA determined that the current procedures were sufficient to ensure that small businesses performing contracts are not unduly harmed by the acceptance of an award for the 8(a) program.

Proposed § 124.506 provided that 8(a) procurements above certain dollar thresholds must be competed among eligible Participants. A number of commenters requested that the competitive thresholds be lowered. These thresholds were set by statute and, therefore, may not be lowered by SBA.

One commenter requested clarification concerning how the thresholds are applied to indefinite delivery/indefinite quantity (ID/IQ) contracts. The commenter asked whether the total value of such contracts would be the value of what the procuring activity actually expects to order or the maximum ordering amount it may order. SBA considers the maximum ordering amount to be the total value of the contract for purposes of determining whether a particular ID/IQ contract must be competed. As a result of this comment, § 124.506(a)(2) has been amended to provide that for indefinite delivery or indefinite quantity type contracts, the thresholds are applied to the maximum order amount authorized.

Language was mistakenly included in proposed § 124.507(c) which referred to limiting competitions to the transitional stage of program participation. SBA has eliminated this language in the final rule, since it does not restrict competitions to the transitional stage.

One commenter objected to the language in proposed § 124.506(c)(3) requiring SBA to deny a request to compete a requirement under the competitive thresholds where the request is made following the inability of the procuring activity and the potential sole source awardee to reach an agreement on price or some other material term or condition. The commenter pointed out that this provision unnecessarily restricts the flexibility of the Federal Government. SBA agrees with this comment and has amended this paragraph to provide only that SBA may deny a request under such circumstances.

A number of commenters objected to SBA's proposal to eliminate its authority to award an 8(a) contract above the competitive threshold on a sole-source basis where there is only one eligible firm capable of performing the requirement. As a result of the comments, SBA has added this provision back to the regulations at § 124.506(d).

Proposed § 124.507 set forth the procedures applicable to competitive 8(a) contracts. One commenter objected to the elimination of the requirement that a firm must obtain SBA approval to do business under a particular SIC code. SBA has considered this comment, but has rejected it. After several years of experience, SBA believes that the burden on an 8(a) Participant to obtain SBA approval for every SIC code under which the Participant might want to perform contracts hinders more than helps the Participant's business development. Moreover, the procuring activity's determination that a particular 8(a) Participant is responsible to perform a given contract should suffice to prevent firms from brokering contracts or from competing for contracts for which they are not qualified.

One commenter correctly pointed out that Certificate of Competency (COC) procedures should not be inapplicable in cases where SBA has delegated contract execution authority to the procuring activity as provided in proposed § 124.507(b)(7). SBA agrees. SBA did not intend to make the COC procedures inapplicable where contract execution authority has been delegated. In addition, the final rule transfers the substance of proposed § 124.507(b)(6) (dealing with the execution of competitive 8(a) contracts) to a new § 124.508. The correction regarding the availability of COCs where SBA has delegated its 8(a) contract execution functions to a procuring activity and the transfer of proposed § 124.507(b)(6) to a new section make proposed § 124.507(b)(7) unnecessary. Thus, SBA has eliminated that provision in this final rule.

A number of commenters objected to the special geographic requirements for construction contracts in proposed § 124.507(c)(2). These requirements are mandated by the Small Business Act and, therefore, may not be eliminated. One commenter correctly pointed out that the reference to principal places of business in proposed § 124.507(c)(2) is incorrect and should be bona fide places of business. SBA agrees with this comment and has made this correction.

This final rule adds a new § 124.508 governing execution of 8(a) contracts. This new section clarifies that SBA, the procuring activity and the 8(a) firm may sign a tripartite agreement or, where SBA has delegated contract execution authority, the procuring activity and the Participant alone may sign an 8(a) contract. This section also provides that, where SBA receives a contract for signature valued at or below the simplified acquisition threshold, it will sign the contract and return it to the procuring activity within three (3) days of receipt. This addition was made to conform to the simplified acquisition procedures in the FAR and to promote expeditious award of smaller contracts.

Pursuant to proposed § 124.508 (§ 124.509 in the final rule), a Participant could not receive sole source 8(a) contracts where it was not in compliance with its non-8(a) business activity targets. A commenter recommended that SBA allow more flexibility to permit sole source awards where the firm can demonstrate good faith efforts to obtain non-8(a) revenue. SBA agrees that a waiver to the requirement prohibiting further sole source contracts when a Participant does not meet its non-8(a) business activity target may be appropriate in limited, extraordinary circumstances. The final rule permits the AA/8(a)BD, or his or her designee, to allow one or more sole source contracts to a Participant that is not in compliance with its non-8(a) business activity target where a denial of a sole source contract would cause severe economic hardship to the Participant so that the Participant's survival may be jeopardized, or where extenuating circumstances beyond the Participant's control caused the Participant not to meet its non-8(a) business activity target. For example, a Participant might demonstrate that it was the apparent successful offeror for a non-8(a) contract that was cancelled by the procuring activity, and that a loss of that projected revenue caused the Participant not to meet its non-8(a) business activity target. However, loss of additional profit or other normal business consequences will not be grounds for granting a waiver. SBA believes that a more extensive waiver is not needed because the rule permits sufficient flexibility by allowing a firm to come into compliance during authorized quarterly reviews. The rule authorizes no appeal right for decisions not to grant a waiver, and such a waiver is totally at SBA's discretion. The final rule also adds a provision authorizing the SBA Administrator to waive the requirement that a Participant cannot receive an 8(a) sole source award when it is not in

compliance with its non-8(a) business activity targets where the head of the procuring activity requests that award be made for the best interests of the Government.

Proposed § 124.509 (§ 124.510 in the final rule) set forth the requirement that certain percentages of work be performed by the 8(a) BD concern on an 8(a) BD contract. One commenter pointed out that compliance with the percentage of work requirements is an element of responsibility and, therefore, should be determined as of the date of award. SBA agrees with this comment and has amended this section to provide that SBA will determine whether the firm will be capable of complying with the percentage of work requirements by the time of award of the contract for both sealed bid and negotiated procurements.

Another commenter correctly pointed out that the example in the regulation conflicts with the requirements set forth in 13 CFR § 125.6, which refer to the work required as a percentage of total labor rather than as a percentage of the total value of the contract. SBA agrees with this comment and has changed example 1 as well as some of the language in § 124.510(c) of the final rule to conform to the language in § 125.6. (The legislation on which the performance of work requirements are based states the percentage of work required as a percentage of total labor and not total value.) Example 2 was not changed because the example does not conflict with either § 125.6 or the legislation. Example 2 merely clarifies application of the rule in the early stages of performance of an ID/IQ contract.

One commenter pointed out that application of the subcontracting limitations at all times during performance of an ID/IQ contract would keep many contractors from proposing on task orders. SBA agrees that the regulation is not flexible enough in this regard and has amended the language in paragraph (c) to provide that SBA may approve in writing an 8(a) BD firm's request to subcontract out more than the required percentage where it receives assurances from both the contractor and the procuring activity that the percentages will be met by the time performance is completed. SBA believes that this addition will provide firms with the necessary flexibility without undermining the purposes of the rule. Where a firm has received permission to subcontract out more than the required percentage and does not comply with the percentage requirements by the end of the contract, SBA will not grant future waivers.

There were a number of comments on proposed § 124.512 governing joint ventures. Several commenters objected to the requirement in proposed § 124.512(e) that a contract be awarded in the name of the 8(a) BD participant or participants, even though the contract is to be performed by the joint venture. The commenters argued that the contract should be in the name of the joint venture to assure that all parties to the joint venture are obligated to perform. SBA agrees with this view and has amended this section to provide that the procuring activity will execute an 8(a) contract in the name of the joint venture entity. With respect to the statutory requirement that all 8(a) contracts be performed by participant concerns, SBA interprets the AA/8(a)BD's acceptance of Participants into the program to extend to approved joint ventures in which the Participant is the lead joint venture partner. In other words, for purposes of contracting, admission into the program includes both a concern in its own capacity and any approved joint venture in which the concern is the lead entity. For contracting purposes, SBA will consider the joint venture to be the Participant where the joint venture meets all applicable requirements and is approved by SBA.

Paragraph (f) requiring all parties to the joint venture to sign such documents as are necessary to obligate themselves to ensure performance of the contract was deleted as unnecessary where the contract is entered into in the joint venture's name. However, a provision was added requiring the joint venture agreement to obligate each party to the venture to complete performance of the contract even if one of the members withdraws. (*See* § 124.513(c)(7))

A number of commenters felt that the provision requiring the 8(a) members of the joint venture to perform the applicable percentages of work under the performance of work requirements (§ 124.510) would undermine the benefits derived from the joint venture arrangement. SBA considered this comment and agrees that many of the advantages of performing a particular contract as a joint venture would be lost if the 8(a) BD concern is required to perform as much of the contract as it would have had to perform had it been awarded the contract directly. Therefore SBA has amended paragraph (b)(1)(iv) of this section to provide that the joint venture must perform the applicable percentage of work. Paragraph (g) was also eliminated in light of this change.

SBA made a number of other technical changes to the joint venture provisions (§ 124.513 in the final rule) as a result of the comments. The term ''lead entity'' was changed to ''managing venturer'' to comport with current terminology. One commenter requested clarification of the term ''very little'' in proposed § 124.512(a) which states that SBA will not approve a joint venture arrangement where the 8(a) concern brings ''very little'' to the relationship. That provision has been clarified to provide that SBA will not approve the joint venture if the 8(a) concern brings very little in terms of resources and expertise to the relationship. A more precise definition would not leave SBA sufficient discretion to judge each case on its own merits.

Proposed § 124.514 (§ 124.515 in the final rule) set forth the provisions requiring an 8(a) contract to be performed by the Participant that was initially awarded it, and requiring the contract to be terminated for convenience if there is a change in the ownership or control of the concern. SBA received several comments regarding the authority for a waiver where one Participant transfers ownership and control to another eligible Participant. The commenters believed that a bulk transfer of all or substantially all of one 8(a) concern's assets to another 8(a) concern should satisfy the requirement this requirement. SBA carefully considered the legal requirements of the Small Business Act as it pertains to this provision. Upon further deliberation, SBA agrees that a transfer of all a Participant's operating assets to another Participant should be treated the same as a transfer of stock or another ownership interest, provided the Participant that transfers its assets to another eligible Participant withdraws from the 8(a) BD program, and it ceases its business operations, or presents a plan to SBA for its orderly dissolution. The requirement that all ''operating assets'' be transferred excludes accounts receivable and cash. SBA will require dissolution or a plan to dissolve as a condition for the waiver because SBA does not believe that it is appropriate for the transferor to remain a separate legal entity that could restart operations and seek to obtain 8(a) contracts after the transfer of all of its operating assets.

SBA received three comments on proposed § 124.516 (§ 124.517 in the final rule) concerning protests of 8(a) contract awards. All three commenters recommended extending this provision to permit protests of the size of a concern in line for a sole source award. SBA rejected this comment since it is difficult for other firms to find out about sole source awards and only a few, if

any, firms would have standing to protest the award of a sole-source contract under SBA's size regulations. SBA has historically verified the size of each potential awardee of a sole-source contract since the benefits of receiving a contract without having to compete are so significant. Moreover, if any concern or individual believes a firm in line for a sole-source award does not meet the size standard for the SIC code for the contract, such firm may contact SBA and explain why it believes that the firm is not small. SBA will consider such information in verifying the size of that concern for the award provided the information is specific and credible. While SBA makes no changes to allow size protests and SIC code appeals in connection with sole source 8(a) contracts at this time, SBA will continue to examine this issue and may make additional changes at a later date.

Proposed § 124.518 (§ 124.519 in the final rule), authorized Participants (other than firms owned by an Indian tribe or an ANC) to receive any combination of 8(a) sole source and 8(a) competitive contracts up to a specified dollar amount (excluding contracts of $100,000 or less). Once that dollar amount of 8(a) contracts is reached, the firm will not be eligible to receive any more 8(a) sole source contracts, but will remain eligible for competitive 8(a) awards. The proposed rule set the dollar limit above which a firm could not receive sole source 8(a) awards at five times the size standard for the firm's primary SIC code or $100,000,000, whichever was less. SBA received comments on both sides of this issue. Several thought the cap was set at too high a level, while others thought that it should be set even higher. No commenters presented persuasive reasons for setting the cap at a level other than that set forth in the proposed rule. As such, the final rule continues the five times the size standard or $100,000,000 language. If the size standard for a particular SIC code increases over time, the corresponding cap amount will also increase. One comment suggested that after a firm reaches the specified dollar threshold amount, SBA should require it to use other 8(a) concerns that have not received contracts as subcontractors in order to receive additional sole source awards. SBA considered this comment, but decided not to adopt it. It is important to remember that SBA will not restrict all 8(a) contract support after a Participant receives total 8(a) contract support equaling at least five times the size standard for its primary SIC code or $100,000,000. A firm will be unable to receive only sole source 8(a) contracts after reaching the cap amount. The alternative suggested by the commenter seeks to have a Participant that has exceeded the cap subcontract 8(a) sole source contracts to other Participants that have not received an 8(a) contract. SBA believes that enforcing the cap should enable more of those same firms (i.e., the Participants that have not received an 8(a) contract) to receive 8(a) contracts directly. While both would aid in distributing the performance of 8(a) contracts to more Participants, from the perspective of a Participant that has not received an 8(a) contract, receiving a sole source contract directly is preferable to getting a piece of an 8(a) contract as another Participant's subcontractor. In addition, SBA believes that the alternative cap amounts are sufficiently high so that a Participant that reaches the cap amount should be able to compete effectively for 8(a) competitive contracts. That, in turn, should assist such firms in reaching viability after leaving the 8(a) program.

Upon further reflection, SBA also amended the date at which a Participant's eligibility for a sole source contract is measured. The proposed rule stated that such eligibility would be measured as of the date of contract award, without taking into account whether the value of that award would cause the limit to be exceeded. SBA believes that such a requirement could cause an undue hardship for both 8(a) Participants and procuring activities. As proposed, SBA could accept a sole source requirement on behalf of a particular Participant (because the Participant had not yet received contracts in excess of the cap amount), the Participant and the procuring activity could enter into protracted negotiations, and SBA could be required later to deny the award of the contract because eligibility would be determined as of the date of award and the Participant may have received one or more competitive 8(a) contracts between the acceptance and award dates. Thus, this final rule changes the date that a firm's eligibility for a sole source award, in terms of whether the firm has exceeded the dollar limit for 8(a) contracts, from the date of award to the date that the requirement is accepted by SBA. This does not in any way imply that all eligibility for an 8(a) sole source contract will now be measured at the acceptance date. In other words, this final rule will continue to require that a firm be a current Participant in the 8(a) program on the date of contract award in order to receive an 8(a) sole source award. See § 124.508(c).

Finally, similar to the provision identified above when a Participant fails to achieve its non-8(a) business activity targets, the final rule adds a provision authorizing the SBA Administrator to waive the requirement that a Participant cannot receive an 8(a) sole source award in excess of the cap amount where the head of the procuring activity requests that award be made for the best interests of the Government.

Proposed § 124.519 (§ 124.520 in the final rule) set forth the standards for the mentor/protege program. Most of the commenters were in favor of this new program, although several warned that the potential existed for abuse. Numerous commenters requested greater detail in this section. Some of the commenters felt that a section explaining the purpose of the program would be helpful. In response to those comments, SBA has amended paragraph (a) of this section to clarify that the program is designed to encourage approved mentors to provide various forms of assistance to eligible Participants, with examples of the assistance contemplated.

SBA received varying views regarding the type of business that should be able to act as a mentor. The comments ranged from recommendations that any business, large or small, disadvantaged-owned or not, should be able to be a mentor, to only small businesses, to support for the proposed rule which limited mentors to former 8(a) Participants and current 8(a) Participants in the transitional stage of the program. Upon further deliberation, SBA believes that the focus should not be on who the mentor is, but what the concern acting as a mentor will provide to the protege. For that reason, the final rule permits any business, large or small, to be a mentor if it can demonstrate the commitment and ability to assist small, developing 8(a) Participants. Under the final rule, a mentor generally will have no more than one protege at a time. The AA/8(a)BD may, however, authorize a concern to mentor more than one protege at a time where the concern can demonstrate that the additional mentor/protege relationship will not adversely affect the development of either protege firm. SBA does not believe that it would be appropriate to authorize a concern to be a mentor in a second mentor/protege relationship if that relationship would harm or compete with the protege of the first mentor/protege relationship approved by SBA.

Some of the commenters felt that the amount of a contract the protege could perform should be limited. After considering this comment, SBA has

decided not to adopt it at this time. SBA does not want to impose additional requirements on mentor/protege joint ventures that do not apply to joint ventures between 8(a) BD concerns and other entities.

Many of the commenters requested guidelines so that the mentor does not take control of the contracts or the company. SBA will monitor the mentor/protege arrangement on a regular basis to help ensure that this does not occur.

Some commenters requested that the program be expanded to enable companies which have never been in the 8(a) BD program to become proteges. SBA has not adopted this recommendation. It must be remembered that SBA's mentor/protege program is designed to be an additional developmental tool for Participants in the 8(a) BD program. Only firms that SBA has certified to participate in the 8(a) BD program are statutorily eligible to receive any of the benefits of the program.

One commenter suggested that a provision be added clarifying that a mentor and protege will not be determined to be affiliated based on the mentor/protege agreement or assistance provided pursuant to the agreement. SBA agrees with this comment and has amended paragraph (d) of this section to add a new subparagraph (4) to this effect.

Several commenters suggested standards for SBA monitoring of the relationship and the adoption of objective standards by which to measure the success of a mentor/protege relationship. In response to these comments, SBA has added a new paragraph (f) to impose specific reporting requirements on the protege and to provide standards under which SBA will review the mentor/protege relationship. The final rule also amends paragraph (e) of this section (§ 124.519(d) in the proposed rule) to provide that SBA will review the mentor/protege relationship annually to determine whether to approve its continuation for another year. As set forth in the rule, the mentor/protege program is designed to assist the development of Participants in the developmental stage of the program, Participants that have not received an 8(a) contract, and Participants having a size that is less than half the size standard corresponding to its primary SIC code. Where a Participant leaves the developmental stage of the program, receives several significant 8(a) contracts, or has a size that exceeds half the size standard corresponding to its primary SIC code, the firm may no longer need the assistance provided by the mentor/protege relationship, and the AA/8(a)BD may decide not to authorize its continuation.

SBA received no comments to proposed §§ 124.601 through 124.603 and §§ 124.701 through 124.704. As such, this rule makes no changes to those sections from the proposed rule.

*Part 124, subpart B:* Subpart B of the proposed rule defined a Small Disadvantaged Business (SDB) and set forth the procedures by which a firm can be recognized as an SDB. As noted above, SBA will discuss the comments to subpart B and finalize its provisions in a later rulemaking action.

*Part 134:* The proposed new Subpart D of Part 134 contained the rules of procedure applying to appeals of denials of 8(a) BD program admission based solely on the negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206; early graduation pursuant to § 124.302 and 124.304; termination pursuant to § 124.303 and 124.304; and denials of requests to issue a waiver of the performance of work/termination for convenience requirements pursuant to § 124.513.

The proposed rules transferred the rules of procedure governing the 8(a) program from § 124.210 to Part 134 so that all procedures related to appeals before OHA are contained in one part of SBA's regulations.

SBA received one comment regarding the proposed revisions to Part 134. The majority of these comments dealt with streamlining the regulations governing the appeals of denials of 8(a) BD program admission and protecting appellant rights.

The proposed rule did not change § 134.202 and § 134.203 of the former regulations. The commenter requested that SBA amend § 134.202 to require that the appeal petition include the SBA determination. SBA agrees that the appeal petition should include the SBA determination and modified § 134.203, which specifies the requirements of a petition, to include the submission of the SBA determination. This provision will allow the Administrative Law Judge to determine, without further delay, whether the appeal was timely filed.

This rule does not finalize the proposed amendment to § 134.206(a) that would have changed the date on which the SBA's 45-day period to file an answer would run. The proposed rule would have changed that date from the date that an appeal is served on SBA to the date that an appeal is filed at OHA. Upon further consideration, SBA does not believe that this change is appropriate. The proposed rule was concerned about SBA not having the allotted time to answer an appeal where the appeal was incorrectly served on SBA's Office of General Counsel. SBA has addressed this concern by clarifying the service requirements for 8(a)-related appeals set forth in § 134.403.

Proposed § 134.401, which outlined the scope of the rules in Subpart D, had no provision for appeals to OHA from suspensions pursuant to § 124.305. A commenter stated that the inclusion of appeals related to suspension was necessary pursuant to § 124.305(b) which provides that notice of suspension includes a statement that a request for hearing on the suspension will be considered by an Administrative Law Judge at OHA and granted or denied as a matter of discretion. SBA agreed with the comment and added § 134.401(e) in response to it.

A commenter noted that proposed § 134.405, which deals with jurisdiction, failed to include a provision for the jurisdiction of suspension cases pursuant to § 124.305. SBA added subsection (c) to proposed § 134.405 in response to this comment. Subsection (c) provides that the jurisdiction of OHA in suspension cases is limited to determining whether the protection of the Government's interest requires suspension pending resolution of the termination action, unless the Administrative Law Judge has consolidated the suspension appeal with the corresponding termination appeal.

Proposed § 134.406 dealt with review of the administrative record and replaced § 124.210. A commenter requested that an appellant be permitted to object to the absence of a document in the administrative record. Since § 134.406(c) provides that the administrative record need not contain all documents pertaining to the appellant, SBA decided that § 134.406(c) should be amended in response to this request. Revised § 134.406(c) allows an appellant to object to the absence of a document he or she believes was erroneously omitted from the administrative record, thereby helping to ensure that the Administrative Law Judge has all of the information needed to decide the case.

Proposed § 134.406(e) limited remand to situations where ''due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide'' the case. A commenter requested that remand be extended to include cases in which SBA made an erroneous analysis of facts. SBA determined that SBA error is properly handled on appeal under

proposed § 134.408 and, therefore, did not adopt this comment.

Proposed § 134.408, which dealt with decisions on appeal, replaced § 124.210. A commenter requested that the term ''re-examine'' be changed to ''reconsider,'' and that a time limit be placed on when the decision is final. SBA determined that for clarity purposes the term ''re-examine'' should be changed to ''reconsider.'' SBA further determined that, in response to the commenter's request for a reasonable time period after which the decision is final, a period of 20 days should be inserted into the proposed regulation after which time the decision is final.

**Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

SBA certifies that this rule is not a major rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The rule addresses changes in the SBA's 8(a) BD program. The overall impact of the changes to the 8(a) BD program will be beneficial to small businesses. The rule also makes several changes to SBA's size regulations that will have an impact beyond that program, and should result in more procurement opportunities for small business generally. No definitive data exist that would allow SBA to conclude that the proposed rule will have a substantial impact on a significant number of small businesses.

Specifically, the rule improves and strengthens the 8(a) BD program. It responds to the challenges posed by the findings in the *Adarand Constructors, Inc.* v. *Pena*, 115 Sup. Ct. 2097 (1995) (Adarand), and are designed to improve the success rates for firms after their terms of participation in the 8(a) BD program end. The rule changes fall within three major categories. They are: (1) measures designed to more equitably distribute 8(a) contracts; (2) small business affiliation rule revisions; and (3) a new mentor/protege program.

The changes that exclude certain joint venture and teaming arrangements from SBA's affiliation rules and the 8(a) mentor/protege program are designed to enable small businesses to effectively compete for contracts that were previously too large for a single small business to perform as a prime contractor. By allowing small businesses to form joint venture and teaming relationships without regard to affiliation, they can be considered responsible contractors for ''bundled'' and other large contracts which exceed the capability of any of the individual small businesses to perform as prime contractors. Likewise, 8(a) Participants will be able to submit offers for and be considered responsible businesses for larger contracts than they would be able to obtain individually without the newly established mentor/protege program. Expanding the number and dollar amount of contracts available for award through the 8(a) BD program may result in a shift of dollars to small business.

In fiscal year (FY) 1996, the federal government spent $197.6 billion on the procurement of goods and services. Small businesses were awarded $41.1 billion in prime contracts, representing about a 21 percent share of the total contract dollars. There are approximately 180,000 small firms registered on PRO-Net, SBA's database of small businesses actively seeking federal government contracts. By comparison, there are approximately 5,800 small firms certified as eligible 8(a) Participants. In FY 1996, $6.4 billion or 3.2 percent of the total government prime contracts were awarded to less than 2,000 8(a) certified small businesses. SBA believes that the changes set forth in this rule will benefit small firms, but not increase the net number of current 8(a) Participants by more than 500 to 800 businesses, or less than 1 percent of the total universe of small firms seeking federal government contracts.

Similarly, the changes regarding affiliation eligibility and the mentor/protege program will benefit small business contractors, but impact a relatively small number of businesses and dollars, when compared to total government spending and the universe of small firms seeking federal government contracts. Because of consolidation, contracts are becoming larger and fewer in number. It has become increasingly more difficult for small business to possess the wherewithal to individually perform these larger contracts. The changes in small business affiliation rules are designed to counter the growing trend of contract consolidation and allow small firms to compete for larger contracts.

For purposes of the Paperwork Reduction Act of 1995 (Public Law 104–13), SBA certifies that this final rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

**List of Subjects**

*13 CFR Part 121*

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

*13 CFR Part 124*

Government procurement, Hawaiian Natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance, Tribally-owned concerns.

*13 CFR Part 134*

Administrative practice and procedure, Organization and functions (Government agencies).

Accordingly, for the reasons set forth above, SBA amends Title 13, Code of Federal Regulations (CFR), as follows:

## PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 continues to read as follows:

**Authority:** Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.103 is amended by redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(4) and (f)(5), respectively, by revising paragraph (f)(2) and by adding a new paragraph (f)(3) to read as follows:

**§ 121.103 What is affiliation?**

* * * * *

(f) * * *

(2) Except as provided in paragraph (f)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) *Exclusion from affiliation.* (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a non-8(a) Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds $10 million.

(ii) A joint venture or teaming arrangement of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (f) of this section so long as the requirements of 13 CFR 124.513(b)(1) are met.

(iii) Two firms approved by SBA to be a mentor and protege under 13 CFR 124.520 may joint venture as a small business for any Federal Government procurement, provided the protege qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in 13 CFR 124.519.

* * * * *

3. Section 121.1001 is amended by redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(3) through (a)(7), by adding the following new paragraph (a)(2), and by revising paragraph (b)(2) to read as follows:

**§ 121.1001 Who may initiate a size protest or request a formal size determination?**

(a) * * *

(2) For competitive 8(a) contracts, the following entities may protest:

(i) Any offeror;

(ii) The contracting officer; or

(iii) The SBA District Director, or designee, in either the district office serving the geographical area in which the procuring activity is located or the district office that services the apparent successful offeror, or the Associate Administrator for 8(a) Business Development.

* * * * *

(b) * * *

(2) For SBA's 8(a) BD program:

(i) Concerning initial or continued 8(a) BD eligibility, the following entities may request a formal size determination:

(A) The 8(a) BD applicant concern or Participant; or

(B) The Assistant Administrator of the Division of Program Certification and Eligibility or the Associate Administrator for 8(a)BD.

(ii) Concerning individual sole source 8(a) contract awards, the following entities may request a formal size determination:

(A) The Participant nominated for award of the particular sole source contract;

(B) The SBA program official with authority to execute the 8(a) contract; or

(C) The SBA District Director in the district office that services the Participant, or the Associate Administrator for 8(a)BD.

* * * * *

4. Section 121.1103 is amended by revising paragraph (a) to read as follows:

**§ 121.1103 What are the procedures for appealing a SIC code designation?**

(a) Generally, any interested party who has been adversely affected by a SIC code designation may appeal the designation to OHA. However, with respect to a particular sole source 8(a) contract, only the Associate Administrator for 8(a)BD may appeal.

* * * * *

## PART 124—[AMENDED]

5. The authority citation for part 124 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

6. In part 124, subpart B consisting of §§ 124.601 through 124.610 is redesignated as subpart B, §§ 124.1001 through 124.1010, and subpart A is revised to read as follows:

## PART 124—8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

### Subpart A—8(a) Business Development

Provisions of General Applicability

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## Subpart A—8(a) Business Development

### Provisions of General Applicability

#### § 124.1 What is the purpose of the 8(a) Business Development program?

Sections 8(a) and 7(j) of the Small Business Act authorize a Minority Small Business and Capital Ownership Development program (designated the 8(a) Business Development or ''8(a) BD'' program for purposes of the regulations in this part). The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns compete in the American economy through business development.

#### § 124.2 What length of time may a business participate in the 8(a) BD program?

A Participant receives a program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program. The Participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility. A firm that completes its nine year term of participation in the 8(a) BD program is deemed to graduate from the program. The nine year program term may be shortened only by termination, early graduation or voluntary graduation as provided for in this subpart.

#### § 124.3 What definitions are important in the 8(a) BD Program?

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation or ANC* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*)

*Bona fide place of business,* for purposes of 8(a) construction procurements, means a location where a Participant regularly maintains an office which employs at least one full-time individual within the appropriate geographical boundary. The term does not include construction trailers or other temporary construction sites.

*Community Development Corporation or CDC* means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805, *et seq.*

*Concern* is defined in part 121 of this title.

*Days* means calendar days unless otherwise specified.

*Day-to-day operations* of a firm means the marketing, production, sales, and administrative functions of the firm.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. *See* definition of ''tribally-owned concern.''

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Negative control* is defined in part 121 of this title.

*Non-disadvantaged individual* means any individual who does not claim disadvantaged status, does not qualify as disadvantaged, or upon whose disadvantaged status an applicant or Participant does not rely in qualifying for 8(a) BD program participation.

*Participant* means a small business concern admitted to participate in the 8(a) BD program.

*Primary industry classification* means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business activity of the 8(a) BD applicant or Participant. The SIC code designations are described in the Standard Industrial Classification Manual published by the U.S. Office of Management and Budget.

*Principal place of business* means the business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where the business records are kept are in different locations, SBA will determine the principal place of business for program purposes.

*Program year* means a 12-month period of an 8(a) BD Participant's program participation. The first program year begins on the date that the concern is certified to participate in the 8(a) BD program and ends one year later. Each subsequent program year begins on the Participant's anniversary of program certification and runs for one 12-month period.

*Same or similar line of business* means business activities within the

same two-digit ''Major Group'' of the SIC Manual as the primary industry classification of the applicant or Participant. The phrase ''same business area'' is synonymous with this definition.

*Self-marketing* of a requirement occurs when a Participant identifies a requirement that has not been committed to the 8(a) BD program and, through its marketing efforts, causes the procuring activity to offer that specific requirement to the 8(a) BD program on the Participant's behalf. A firm which identifies and markets a requirement which is subsequently offered to the 8(a) BD program as an open requirement or on behalf of another Participant has not ''self-marketed'' the requirement within the meaning of this part.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*Unconditional ownership* means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

## Eligibility Requirements for Participation in the 8(a) Business Development Program

### § 124.101 What are the basic requirements a concern must meet for the 8(a) BD program?

Generally, a concern meets the basic requirements for admission to the 8(a) BD program if it is a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and which demonstrates potential for success.

### § 124.102 What size business is eligible to participate in the 8(a) BD program?

(a) An applicant concern must qualify as a small business concern as defined in part 121 of this title. The applicable size standard is the one for its primary industry classification. The rules for calculating the size of a tribally-owned concern, a concern owned by an Alaska Native Corporation, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation are additionally affected by §§ 124.109, 124.110, and 124.111, respectively.

(b) If 8(a) BD program officials determine that a concern may not qualify as small, they may deny an application for 8(a) BD program admission or may request a formal size determination under part 121 of this title.

(c) A concern whose application is denied due to size by 8(a) BD program officials may request a formal size determination under part 121 of this title. A favorable determination will enable the firm to immediately submit a new 8(a) BD application without waiting one year.

### § 124.103 Who is socially disadvantaged?

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.

(b) *Members of designated groups.* (1) There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section. Being born in a country does not, by itself, suffice to make the birth country an individual's country of origin for purposes of being included within a designated group.

(2) An individual must demonstrate that he or she has held himself or herself out, and is currently identified by others, as a member of a designated group if SBA requires it.

(3) The presumption of social disadvantage may be overcome with credible evidence to the contrary. Individuals possessing or knowing of such evidence should submit the information in writing to the Associate Administrator for 8(a) BD (AA/8(a)BD) for consideration.

(c) *Individuals not members of designated groups.* (1) An individual who is not a member of one of the groups presumed to be socially disadvantaged in paragraph (b)(1) of this section must establish individual social disadvantage by a preponderance of the evidence.

(2) Evidence of individual social disadvantage must include the following elements:

(i) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(ii) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(iii) Negative impact on entry into or advancement in the business world because of the disadvantage. SBA will consider any relevant evidence in assessing this element. In every case, however, SBA will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(A) *Education.* SBA considers such factors as denial of equal access to institutions of higher education, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(B) *Employment.* SBA considers such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer; and social patterns or pressures which have channelled the individual into nonprofessional or non-business fields.

(C) *Business history.* SBA considers such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business

associates, and exclusion from business or professional organizations.

(d) *Socially disadvantaged group inclusion.* (1) *General.* Representatives of an identifiable group whose members believe that the group has suffered chronic racial or ethnic prejudice or cultural bias may petition SBA to be included as a presumptively socially disadvantaged group under paragraph (b)(1) of this section. Upon presentation of substantial evidence that members of the group have been subjected to racial or ethnic prejudice or cultural bias because of their identity as group members and without regard to their individual qualities, SBA will publish a notice in the **Federal Register** that it has received and is considering such a request, and that it will consider public comments.

(2) *Standards to be applied.* In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this section, SBA must determine that:

(i) The group has suffered prejudice, bias, or discriminatory practices;

(ii) Those conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in the Small Business Act; and

(iii) Those conditions have produced impediments in the business world for members of the group over which they have no control and which are not common to small business owners generally.

(3) *Procedure.* The notice published under paragraph (d)(1) of this section will authorize a specified period for the receipt of public comments supporting or opposing the petition for socially disadvantaged group status. If appropriate, SBA may hold hearings. SBA may also conduct its own research relative to the group's petition.

(4) *Decision.* In making a final decision that a group should be considered presumptively disadvantaged, SBA must find that a preponderance of the evidence demonstrates that the group has met the standards set forth in paragraph (d)(2) of this section based on SBA's consideration of the group petition, the comments from the public, and any independent research it performs. SBA will advise the petitioners of its final decision in writing, and publish its conclusion as a notice in the **Federal Register**. If appropriate, SBA will amend paragraph (b)(1) of this section to include a new group.

**§ 124.104 Who is economically disadvantaged?**

(a) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(b) *Submission of narrative and financial information.* (1) Each individual claiming economic disadvantage must describe it in a narrative statement, and must submit personal financial information.

(2) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.

(c) *Factors to be considered.* In considering diminished capital and credit opportunities, SBA will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. SBA will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that SBA compares include total assets, net sales, pre tax profit, sales/working capital ratio, and net worth.

(1) *Transfers within two years.* (i) Except as set forth in paragraph (c)(1)(ii) of this section, SBA will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the 8(a) BD program or within two years of a Participant's annual program review, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(ii) SBA will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(iii) In determining an individual's access to capital and credit, SBA may consider any assets that the individual transferred within such two-year period described by paragraph (c)(1)(i) of this section that SBA does not consider in evaluating the individual's assets and net worth (e.g., transfers to charities).

(2) *Net worth.* For initial 8(a) BD eligibility, the net worth of an individual claiming disadvantage must be less than $250,000. For continued 8(a) BD eligibility after admission to the program, net worth must be less than $750,000. In determining such net worth, SBA will exclude the ownership interest in the applicant or Participant and the equity in the primary personal residence (except any portion of such equity which is attributable to excessive withdrawals from the applicant or Participant). Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(i) A contingent liability does not reduce an individual's net worth.

(ii) The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

**§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?**

An applicant or Participant must be at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations (CDCs). *See*

§ 124.3 for definition of unconditional ownership; and §§ 124.109, 124.110, and 124.111, respectively, for special ownership requirements for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, and CDCs.

(a) *Ownership must be direct.* Ownership by one or more disadvantaged individuals must be direct ownership. An applicant or Participant owned principally by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more disadvantaged individuals does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a disadvantaged individual where the trust is revocable, and the disadvantaged individual is the grantor, a trustee, and the sole current beneficiary of the trust.

(b) *Ownership of a partnership.* In the case of a concern which is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged. The ownership must be reflected in the concern's partnership agreement.

(c) *Ownership of a limited liability company.* In the case of a concern which is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(d) *Ownership of a corporation.* In the case of a concern which is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(e) *Stock options' effect on ownership.* In determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by disadvantaged individuals. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-disadvantaged individuals will be treated as exercised, except for any ownership interests which are held by investment companies licensed under the Small Business Investment Act of 1958.

(f) *Dividends and distributions.* One or more disadvantaged individuals must be entitled to receive:

(1) At least 51 percent of the annual distribution of dividends paid on the stock of a corporate applicant concern;

(2) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation.

(g) *Ownership of another Participant.* The individuals determined to be disadvantaged for purposes of one Participant, their immediate family members, and the Participant itself, may not hold, in the aggregate, more than a 20 percent equity ownership interest in any other single Participant.

(h) *Ownership restrictions for non-disadvantaged individuals and concerns.* (1) A non-disadvantaged individual (in the aggregate with all immediate family members) or a non-Participant concern that is a general partner or stockholder with at least a 10 percent ownership interest in one Participant may not own more than a 10 percent interest in another Participant that is in the developmental stage or more than a 20 percent interest in another Participant in the transitional stage of the program. This restriction does not apply to financial institutions licensed or chartered by Federal, state or local government, including investment companies which are licensed under the Small Business Investment Act of 1958.

(2) A non-Participant concern in the same or similar line of business may not own more than a 10 percent interest in a Participant that is in the developmental stage or more than a 20 percent interest in a Participant in a transitional stage of the program, except that a former Participant or a principal of a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§ 124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the developmental stage of the program or up to 30 percent in a transitional stage Participant, in the same or similar line of business.

(i) *Change of ownership.* A Participant may change its ownership or business structure so long as one or more disadvantaged individuals own and control it after the change and SBA approves the transaction in writing prior to the change. The decision to approve or deny a Participant's request for a change in ownership or business structure will be made and communicated to the firm by the AA/8(a)BD. The decision of the AA/8(a)BD is the final decision of the Agency. The AA/8(a)BD will issue a decision within 60 days from receipt of a request containing all necessary documentation, or as soon thereafter as possible. If 60 days lapse without a decision from SBA, the Participant cannot presume that it can complete the change without written approval from SBA. A decision to deny a request for change of ownership or business structure may be grounds for program termination where the change is made nevertheless.

(1) Any Participant that was awarded one or more 8(a) contracts may substitute one disadvantaged individual for another disadvantaged individual without requiring the termination of those contracts or a request for waiver under § 124.515, as long as it receives SBA's approval prior to the change.

(2) Where the previous owner held less than a 10 percent interest in the concern, or the transfer results from the death or incapacity due to a serious, long-term illness or injury of a disadvantaged principal, prior approval is not required, but the concern must notify SBA within 60 days.

(3) Continued participation of the Participant with new ownership and the award of any new 8(a) contracts requires SBA's determination that all eligibility requirements are met by the concern and the new owners.

(4) Where a Participant requests a change of ownership or business structure, and proceeds with the change prior to receiving SBA approval (or where a change of ownership results from the death or incapacity of a disadvantaged individual for which a request prior to the change in ownership could not occur), SBA will suspend the Participant from program benefits pending resolution of the request. If the change is approved, the length of the suspension will be restored to the Participant's program term in the case of death or incapacity, or if the firm requested prior approval and waited 60 days for SBA approval.

(5) A change in ownership does not provide the new owner(s) with a new 8(a) BD program term. For example, if a concern has been in the 8(a) BD program for five years when a change in ownership occurs, the new owner will have four years remaining until program graduation.

(j) *Public offering.* A Participant's request for SBA's approval for the issuance of a public offering will be treated as a request for a change of ownership. Such request will cause SBA to examine the concern's continued need for access to the business

development resources of the 8(a) BD program.

(k) *Community property laws given effect.* In determining ownership interests when an owner resides in any of the community property states or territories of the United States (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin), SBA considers applicable state community property laws. If only one spouse claims disadvantaged status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws. A transfer or relinquishment of interest by the non-disadvantaged spouse may be necessary in some cases to establish eligibility.

**§ 124.106 When do disadvantaged individuals control an applicant or Participant?**

Control is not the same as ownership, although both may reside in the same person. SBA regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or Participant's management and daily business operations must be conducted by one or more disadvantaged individuals, except for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, or Community Development Corporations (CDCs). (*See* §§ 124.109, 124.110, and 124.111, respectively, for the requirements for concerns owned by Indian tribes or ANCs, for concerns owned by Native Hawaiian Organizations, and for CDC-owned concerns.) Disadvantaged individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A disadvantaged individual need not have the technical expertise or possess a required license to be found to control an applicant or Participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, where a critical license is held by a non-disadvantaged individual having an equity interest in the applicant or Participant firm, the non-disadvantaged individual may be found to control the firm.

(a)(1) An applicant or Participant must be managed on a full-time basis by one or more disadvantaged individuals who possess requisite management capabilities.

(2) A disadvantaged full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or Participant.

(3) One or more disadvantaged individuals who manage the applicant or Participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business. Work in a wholly-owned subsidiary of the applicant or participant may be considered to meet the requirement of full-time devotion. This applies only to a subsidiary owned by the 8(a) firm, and not to firms in which the disadvantaged individual has an ownership interest.

(4) Any disadvantaged manager who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the prior written approval of SBA. SBA will deny a request for outside employment which could conflict with the management of the firm or could hinder it in achieving the objectives of its business development plan.

(5) Except as provided in paragraph (d)(1) of this section, a disadvantaged owner's unexercised right to cause a change in the control or management of the applicant concern does not in itself constitute disadvantaged control and management, regardless of how quickly or easily the right could be exercised.

(b) In the case of a partnership, one or more disadvantaged individuals must serve as general partners, with control over all partnership decisions. A partnership in which no disadvantaged individual is a general partner will be ineligible for participation.

(c) In the case of a limited liability company, one or more disadvantaged individuals must serve as management members, with control over all decisions of the limited liability company.

(d) One or more disadvantaged individuals must control the Board of Directors of a corporate applicant or Participant.

(1) SBA will deem disadvantaged individuals to control the Board of Directors where:

(i) A single disadvantaged individual owns 100% of all voting stock of an applicant or Participant concern;

(ii) A single disadvantaged individual owns at least 51% of all voting stock of an applicant or Participant concern, the individual is on the Board of Directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where super majority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by state law, the disadvantaged individual must own at least the percent of the voting stock needed to overcome any such super majority voting requirements; or

(iii) More than one disadvantaged shareholder seeks to qualify the concern (i.e., no one individual owns 51%), each such individual is on the Board of Directors, together they own at least 51% of all voting stock of the concern, no super majority voting requirements exist, and the disadvantaged shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has super majority voting requirements, the disadvantaged shareholders must own at least that percentage of voting stock needed to overcome any such super majority ownership requirements.

(2) Where an applicant or Participant does not meet the requirements set forth in paragraph (d)(1) of this section, the disadvantaged individual(s) upon whom eligibility is based must control the Board of Directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (e.g., in a concern having a two-person Board of Directors where one individual on the Board is disadvantaged and one is not, the disadvantaged vote must be weighted—worth more than one vote—in order for the concern to be eligible for 8(a) participation). Where a concern seeks to comply with this paragraph:

(i) Provisions for the establishment of a quorum cannot permit non-disadvantaged Directors to control the Board of Directors, directly or indirectly;

(ii) Any Executive Committee of Directors must be controlled by disadvantaged directors unless the Executive Committee can only make recommendations to and cannot independently exercise the authority of the Board of Directors.

(3) An applicant must inform SBA of any super majority voting requirements provided for in its articles of incorporation, its by-laws, by state law, or otherwise. Similarly, after being admitted to the program, a Participant must inform SBA of changes regarding super majority voting requirements.

(4) Non-voting, advisory, or honorary Directors may be appointed without affecting disadvantaged individuals' control of the Board of Directors.

(5) Arrangements regarding the structure and voting rights of the Board of Directors must comply with applicable state law.

(e) Non-disadvantaged individuals may be involved in the management of an applicant or Participant, and may be stockholders, partners, limited liability

members, officers, and/or directors of the applicant or Participant. However, no such non-disadvantaged individual or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or Participant;

(2) Be a former employer or a principal of a former employer of any disadvantaged owner of the applicant or Participant, unless it is determined by the AA/8(a)BD that the relationship between the former employer or principal and the disadvantaged individual or applicant concern does not give the former employer actual control or the potential to control the applicant or Participant and such relationship is in the best interests of the 8(a) BD firm; or

(3) Receive compensation from the applicant or Participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually CEO or President). The highest ranking officer may elect to take a lower salary than a non-disadvantaged individual only upon demonstrating that it helps the applicant or Participant. In the case of a Participant, the Participant must also obtain the prior written consent of the AA/8(a)BD or designee before changing the compensation paid to the highest ranking officer to be below that paid to a non-disadvantaged individual.

(f) Non-disadvantaged individuals who transfer majority stock ownership or control of the firm to an immediate family member within two years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm.

(g) Non-disadvantaged individuals or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) In circumstances where an applicant or Participant seeks to establish disadvantaged control of the Board of Directors through paragraph (d)(2) of this section, non-disadvantaged individuals control the Board of Directors of the applicant or Participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-disadvantaged individuals effectively to prevent a quorum or block actions proposed by the disadvantaged individuals.

(2) A non-disadvantaged individual or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or Participant which directly or indirectly allows the non-disadvantaged individual significantly to influence business decisions of the Participant.

(3) A non-disadvantaged individual or entity controls the applicant or Participant or an individual disadvantaged owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-disadvantaged individual or entity the power to control a firm.

(4) Business relationships exist with non-disadvantaged individuals or entities which cause such dependence that the applicant or Participant cannot exercise independent business judgment without great economic risk.

**§ 124.107 What is potential for success?**

The applicant concern must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. To do so, it must be in business in its primary industry classification for at least two full years immediately prior to the date of its 8(a) BD application, unless a waiver for this requirement is granted pursuant to paragraph (b) of this section.

(a) Income tax returns for each of the two previous tax years must show operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification.

(b)(1) SBA may waive the two years in business requirement if each of the following five conditions are met:

(i) The individual or individuals upon whom eligibility is based have substantial business management experience;

(ii) The applicant has demonstrated technical experience to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD program;

(iii) The applicant has adequate capital to sustain its operations and carry out its business plan as a Participant;

(iv) The applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category; and

(v) The applicant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform contracts as a Participant.

(2) The concern seeking a waiver under paragraph (b) must provide information on governmental and nongovernmental contracts in progress and completed (including letters of reference) in order to establish successful contract performance, and must demonstrate how it otherwise meets the five conditions for waiver. SBA considers an applicant's performance on both government and private sector contracts in determining whether the firm has an overall successful performance record. If, however, the applicant has performed only government contracts or only private sector contracts, SBA will review its performance on those contracts alone to determine whether the applicant possesses a record of successful performance.

(c) In assessing potential for success, SBA considers the concern's access to credit and capital, including, but not limited to, access to long-term financing, access to working capital financing, equipment trade credit, access to raw materials and supplier trade credit, and bonding capability.

(d) In assessing potential for success, SBA will also consider the technical and managerial experience of the applicant concern's managers, the operating history of the concern, the concern's record of performance on previous Federal and private sector contracts in the primary industry in which the concern is seeking 8(a) BD certification, and its financial capacity. The applicant concern as a whole must demonstrate both technical knowledge in its primary industry category and management experience sufficient to run its day-to-day operations.

(e) The Participant or individuals employed by the Participant must hold all requisite licenses if the concern is engaged in an industry requiring professional licensing (e.g., public accountancy, law, professional engineering).

(f) An applicant will not be denied admission into the 8(a) BD program due solely to a determination that potential 8(a) contract opportunities are unavailable to assist in the development of the concern unless:

(1) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(2) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Participants providing the same or similar items or services.

**§ 124.108 What other eligibility requirements apply for individuals or businesses?**

(a) *Good character.* The applicant or Participant and all its principals must have good character.

(1) If, during the processing of an application, adverse information is obtained from the applicant or a credible source regarding possible criminal conduct by the applicant or any of its principals, no further action will be taken on the application until SBA's Inspector General has collected relevant information and has advised the AA/8(a)BD of his or her findings. The AA/8(a)BD will consider those findings when evaluating the application.

(2) Violations of any of SBA's regulations may result in denial of participation in the 8(a) BD program. The AA/8(a)BD will consider the nature and severity of the violation in making an eligibility determination.

(3) Debarred or suspended concerns or concerns owned by debarred or suspended persons are ineligible for admission to the 8(a) BD program.

(4) An applicant is ineligible for admission to the 8(a) BD program if the applicant concern or a proprietor, partner, limited liability member, director, officer, or holder of at least 10 percent of its stock, or another person (including key employees) with significant authority over the concern:

(i) Lacks business integrity as demonstrated by information related to an indictment or guilty plea, conviction, civil judgment, or settlement; or

(ii) Is currently incarcerated, or on parole or probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity.

(5) If, during the processing of an application, SBA determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application. If, after admission to the program, SBA discovers that false information has been knowingly submitted by a firm, SBA will initiate termination proceedings and suspend the firm under §§ 124.304 and 124.305. Whenever SBA determines that the applicant submitted false information, the matter will be referred to SBA's Office of Inspector General for review.

(b) *One-time eligibility.* Once a concern or disadvantaged individual upon whom eligibility was based has participated in the 8(a) BD program, neither the concern nor that individual will be eligible again.

(1) An individual who claims disadvantage and completes the appropriate SBA forms to qualify an applicant has participated in the 8(a) BD program if SBA approves the application.

(2) Use of eligibility will take effect on the date of the concern's approval for admission into the program.

(3) An individual who uses his or her one-time eligibility to qualify a concern for the 8(a) BD program will be considered a non-disadvantaged individual for ownership or control purposes of another applicant or Participant. The criteria restricting participation by non-disadvantaged individuals will apply to such an individual. *See* §§ 124.105 and 124.106.

(4) When at least 50% of the assets of a concern are the same as those of a former Participant, the concern will not be eligible for entry into the program.

(5) Participants which change their form of business organization and transfer their assets and liabilities to the new organization may do so without affecting the eligibility of the new organization provided the previous business is dissolved and all other eligibility criteria are met. In such a case, the new organization may complete the remaining program term of the previous organization. A request for a change in business form will be treated as a change of ownership under § 124.105(i).

(c) *Wholesalers.* An applicant concern seeking admission to the 8(a) BD program as a wholesaler need not demonstrate that it is capable of meeting the requirements of the nonmanufacturer rule for its primary industry classification.

(d) *Brokers.* Brokers are ineligible to participate in the 8(a) BD program. A broker is a concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.

(e) *Federal financial obligations.* Neither a firm nor any of its principals that fails to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing, is eligible for admission to or participation in the 8(a) BD program.

**§ 124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to the 8(a) BD program?**

(a) *Special rules for ANCs.* Small business concerns owned and controlled by ANCs are eligible for participation in the 8(a) program and must meet the eligibility criteria set forth in § 124.112 to the extent the criteria are not inconsistent with this section. ANC-owned concerns are subject to the same conditions that apply to tribally-owned concerns, as described in paragraphs (b) and (c) of this section, except that the following provisions and exceptions apply only to ANC-owned concerns:

(1) Alaska Natives and descendants of Natives must own a majority of both the total equity of the ANC and the total voting powers to elect directors of the ANC through their holdings of settlement common stock. Settlement common stock means stock of an ANC issued pursuant to 43 U.S.C. 1606(g)(1), which is subject to the rights and restrictions listed in 43 U.S.C. 1606(h)(1).

(2) An ANC that meets the requirements set forth in paragraph (a)(1) of this section is deemed economically disadvantaged under 43 U.S.C. 1626(e), and need not establish economic disadvantage as required by paragraph (b)(2) of this section.

(3) Even though an ANC can be either for profit or non-profit, a small business concern owned and controlled by an ANC must be for profit to be eligible for the 8(a) program. The concern will be deemed owned and controlled by the ANC where both the majority of stock or other ownership interest and total voting power are held by the ANC and holders of its settlement common stock.

(4) The Alaska Native Claims Settlement Act provides that a concern which is majority owned by an ANC shall be deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. Therefore, an individual responsible for control and management of an ANC-owned applicant or Participant need not establish personal social and economic disadvantage.

(5) Paragraphs (b)(3)(i), (ii) and (iv) of this section are not applicable to an ANC, provided its status as an ANC is clearly shown in its articles of incorporation.

(6) Paragraph (c)(1) of this section is not applicable to an ANC-owned concern to the extent it requires an express waiver of sovereign immunity or a ''sue and be sued'' clause.

(b) *Tribal eligibility.* In order to qualify a concern which it owns and controls for participation in the 8(a) BD program, an Indian tribe must establish its own economic disadvantaged status under paragraph (b)(2) of this section. Thereafter, it need not reestablish such status in order to have other businesses

that it owns certified for 8(a) BD program participation, unless specifically required to do so by the AA/8(a)BD or designee. Each tribally-owned concern seeking to be certified for 8(a) BD participation must comply with the provisions of paragraph (c) of this section.

(1) *Social disadvantage.* An Indian tribe as defined in § 124.3 is considered to be socially disadvantaged.

(2) *Economic disadvantage.* In order to be eligible to participate in the 8(a) BD program, the Indian tribe must demonstrate to SBA that the tribe itself is economically disadvantaged. This must involve the consideration of available data showing the tribe's economic condition, including but not limited to, the following information:

(i) The number of tribal members.

(ii) The present tribal unemployment rate.

(iii) The per capita income of tribal members, excluding judgment awards.

(iv) The percentage of the local Indian population below the poverty level.

(v) The tribe's access to capital.

(vi) The tribal assets as disclosed in a current tribal financial statement. The statement must list all assets including those which are encumbered or held in trust, but the status of those encumbered or in trust must be clearly delineated.

(vii) A list of all wholly or partially owned tribal enterprises or affiliates and the primary industry classification of each. The list must also specify the members of the tribe who manage or control such enterprises by serving as officers or directors.

(3) *Forms and documents required to be submitted.* Except as otherwise provided in this section, the Indian tribe generally must submit the forms and documents required of 8(a) BD applicants as well as the following material:

(i) A copy of all governing documents such as the tribe's constitution or business charter.

(ii) Evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or by its state of residence.

(iii) Copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.

(iv) Documents or materials needed to show the tribe's economically disadvantaged status as described in paragraph (b)(2) of this section.

(c) *Business eligibility.* In order to be eligible to participate in the 8(a) BD program, a concern which is owned by an eligible Indian tribe (or wholly owned business entities of such tribe) must meet the conditions set forth in paragraphs (c)(1) through (c)(7) of this section.

(1) *Legal business entity organized for profit and susceptible to suit.* The applicant or participating concern must be a separate and distinct legal entity organized or chartered by the tribe, or Federal or state authorities. The concern's articles of incorporation, partnership agreement or limited liability company articles of organization must contain express sovereign immunity waiver language, or a ''sue and be sued'' clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs including, but not limited to, 8(a) BD program participation, loans, and contract performance. Also, the concern must be organized for profit, and the tribe must possess economic development powers in the tribe's governing documents.

(2) *Size.* (i) A tribally-owned applicant concern must qualify as a small business concern as defined for purposes of Federal Government procurement in part 121 of this title. The particular size standard to be applied is based on the primary industry classification of the applicant concern.

(ii) A tribally-owned Participant must certify to SBA that it is a small business pursuant to the provisions of part 121 of this title for the purpose of performing each individual contract which it is awarded.

(iii) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe) for either 8(a) BD program entry or contract award, the firm's size shall be determined independently without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally-owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(3) *Ownership.* (i) For corporate entities, a tribe must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, a tribe must own at least a 51 percent interest.

(ii) A tribe cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary SIC code as the applicant. A tribe may, however, own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the tribe operates in the 8(a) BD program as its primary SIC code.

(iii) The restrictions of § 124.105(h) do not apply to tribes; they do, however, apply to non disadvantaged individuals or other business concerns that are partial owners of a tribally-owned concern.

(4) *Control and management.* (i) The management and daily business operations of a tribally-owned concern must be controlled by the tribe, through one or more disadvantaged individual members who possess sufficient management experience of an extent and complexity needed to run the concern, or through management as follows:

(A) Management may be provided by committees, teams, or Boards of Directors which are controlled by one or more members of an economically disadvantaged tribe, or

(B) Management may be provided by non-tribal members if SBA determines that such management is required to assist the concern's development, that the tribe will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how disadvantaged tribal members will develop managerial skills sufficient to manage the concern or similar tribally-owned concerns in the future.

(ii) Members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan. This is not intended to preclude participation in tribal or other activities which do not interfere with such individual's responsibilities in the operation of the applicant concern.

(5) *Individual eligibility limitation.* SBA does not deem an individual involved in the management or daily business operations of a tribally-owned concern to have used his or her individual eligibility within the meaning of § 124.108(b).

(6) *Potential for success.* (i) A tribally-owned applicant concern must be in business for at least two years, as evidenced by income tax returns for

each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (c)(6)(ii) of this section.

(ii) In determining whether a tribally-owned concern has the potential for success, SBA will look at a number of factors including, but not limited to:

(A) The technical and managerial experience and competency of the individual(s) who will manage and control the daily operation of the concern;

(B) The financial capacity of the concern; and

(C) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

(7) *Other eligibility criteria.* (i) As with other 8(a) applicants, a tribally-owned applicant concern shall not be denied admission into the 8(a) program due solely to a determination that specific contract opportunities are unavailable to assist the development of the concern unless:

(A) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(B) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other program participants providing the same or similar items or services.

(ii) Except for the tribe itself, the concern's officers, directors, and all shareholders owning an interest of 20% or more must demonstrate good character. *See* § 124.108(a).

**§ 124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?**

(a) Concerns owned by economically disadvantaged Native Hawaiian Organizations, as defined in § 124.3, are eligible for participation in the 8(a) program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.101 through 124.108 and § 124.112 to the extent that they are not inconsistent with this section.

(b) A concern owned by a Native Hawaiian Organization must qualify as a small business concern as defined in part 121 of this title. The size standard corresponding to the primary industry classification of the applicant concern applies for determining size. SBA will determine the concern's size independently, without regard to its affiliation with the Native Hawaiian Organization or any other business enterprise owned by the Native Hawaiian Organization, unless the Administrator determines that one or more such concerns owned by the Native Hawaiian Organization have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(c) A Native Hawaiian Organization cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary SIC code as the applicant. A Native Hawaiian Organization may, however, own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the Native Hawaiian Organization operates in the 8(a) BD program as its primary SIC code.

(d) SBA does not deem an individual involved in the management or daily business operations of a Participant owned by a Native Hawaiian Organization to have used his or her individual eligibility within the meaning of § 124.108(b).

(e)(1) An applicant concern owned by a Native Hawaiian Organization must be in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (e)(2) of this section.

(2) In determining whether a concern owned by a Native Hawaiian Organization has the potential for success, SBA will look at a number of factors including, but not limited to:

(i) The technical and managerial experience and competence of the individual(s) who will manage and control the daily operation of the concern.

(ii) The financial capacity of the concern; and

(iii) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

**§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?**

(a) Concerns owned at least 51 percent by CDCs (or a wholly owned business entity of a CDC) are eligible for participation in the 8(a) BD program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. These concerns must meet all eligibility criteria set forth in § 124.101 through § 124.108 and § 124.112 to the extent that they are not inconsistent with this section.

(b) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) is considered to be controlled by such CDC and eligible for participation in the 8(a) BD program, provided it meets all eligibility criteria set forth or referred to in this section and its management and daily business operations are conducted by one or more individuals determined to have managerial experience of an extent and complexity needed to run the concern.

(c) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) must qualify as a small business concern as defined in part 121 of this title. The size standard corresponding to the primary industry classification of the applicant concern applies for determining size. SBA will determine the concern's size independently, without regard to its affiliation with the CDC or any other business enterprise owned by the CDC, unless the Administrator determines that one or more such concerns owned by the CDC have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(d) A CDC cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary SIC code as the applicant. A CDC may, however, own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the CDC operates in the 8(a) BD program as its primary SIC code.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of § 124.108(b).

(f)(1) A CDC-owned applicant concern must be in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (e)(2) of this section.

(2) In determining whether a CDC-owned concern has the potential for success, SBA will look at a number of factors including, but not limited to:

(i) The technical and managerial experience and competence of the individual(s) who will manage and control the daily operation of the concern;

(ii) The financial capacity of the concern; and

(iii) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

(g) A CDC-owned applicant and all of its principals must have good character as set forth in § 124.108(a).

**§ 124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?**

(a) *Standards.* In order for a concern (except those owned by Indian tribes, ANCs, Native Hawaiian Organizations or CDCs) to remain eligible for 8(a) BD program participation, it must continue to meet all eligibility criteria contained in § 124.101 through § 124.108. For concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations or CDCs to remain eligible, they must meet the criteria set forth in this § 124.112 to the extent that they are not inconsistent with § 124.109, § 124.110 and § 124.111, respectively. The concern must inform SBA in writing of any changes in circumstances which would adversely affect its program eligibility, especially economic disadvantage and ownership and control. Any concern that fails to meet the eligibility requirements after being admitted to the program will be subject to termination or early graduation under §§ 124.302 through 124.304, as appropriate.

(b) *Submissions supporting continued eligibility.* As part of an annual review, each Participant must annually submit to the servicing district office the following:

(1) A certification that it meets the 8(a) BD program eligibility requirements as set forth in § 124.101 through § 124.108 and paragraph (a) of this section;

(2) A certification that there have been no changed circumstances which could adversely affect the Participant's program eligibility. If the Participant is unable to provide such certification, the Participant must inform SBA of any changes and provide relevant supporting documentation.

(3) Personal financial information for each disadvantaged owner;

(4) A record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member, or to a trust any beneficiary of which is an immediate family member, within two years of the date of the annual review. The record must provide the name of the recipient(s) and family relationship, and the difference between the fair market value of the asset transferred and the value received by the disadvantaged individual.

(5) A record of all payments, compensation, and distributions (including loans, advances, salaries and dividends) made by the Participant to each of its owners, officers or directors, or to any person or entity affiliated with such individuals;

(6) If it is an approved protege, a narrative report detailing the contacts it has had with its mentor and benefits it has received from the mentor/protege relationship. See § 124.520(b)(4) for additional annual requirements;

(7) IRS Form 4506, Request for Copy or Transcript of Tax Form; and

(8) Such other information as SBA may deem necessary. For other required annual submissions, *see* §§ 124.601 through 124.603.

(c) *Eligibility reviews.* (1) Upon receipt of specific and credible information alleging that a Participant no longer meets the eligibility requirements for continued program eligibility, SBA will review the concern's eligibility for continued participation in the program.

(2) Sufficient reasons for SBA to conclude that a socially disadvantaged individual is no longer economically disadvantaged include, but are not limited to, excessive withdrawals of funds or other assets withdrawn from the concern by its owners, or substantial personal assets, income or net worth of any disadvantaged owner. SBA may also consider access by the Participant firm to a significant new source of capital or loans since the financial condition of the Participant is considered in evaluating the disadvantaged individual's economic status.

(d) *Excessive withdrawals.* (1) The term withdrawal includes, but is not limited to, the following: officer's salary; cash dividends; distributions in excess of amounts needed to pay S Corporation taxes; cash and property withdrawals; bonuses; loans; advances; payments to immediate family members; investments on behalf of an owner, officer, or key employee; acquisition of a business not merged with the 8(a) Participant; charitable contributions; and speculative ventures.

(2) If SBA determines that excessive funds or other assets have been withdrawn from the Participant, SBA may:

(i) Initiate termination proceedings under §§ 124.303 and 124.304 where the withdrawals detrimentally affect the achievement of the Participant's targets, objectives and goals set forth in its business plan, or its overall business development;

(ii) Initiate early graduation proceedings under §§ 124.302 and 124.303 where the withdrawals do not adversely affect the Participant's business development; or

(iii) Require an appropriate reinvestment of funds or other assets, as well as any other actions SBA deems necessary to counteract the detrimental effects of the withdrawals, as a condition of the Participant maintaining program eligibility.

(3) Withdrawals are excessive if during any fiscal year of the Participant they exceed (i) $150,000 for firms with sales up to $1,000,000; (ii) $200,000 for firms with sales between $1,000,000 and $2,000,000; and (iii) $300,000 for firms with sales over $2,000,000.

(4) The fact that a concern's net worth has increased despite withdrawals that are deemed excessive will not preclude SBA from determining that such withdrawals were detrimental to the attainment of the concern's business objectives or to its overall business development.

## Applying to the 8(a) BD Program

**§ 124.201 May any business submit an application?**

Any concern or any individual on behalf of a business has the right to apply for 8(a) BD program participation whether or not there is an appearance of eligibility.

**§ 124.202 Where must an application be filed?**

An application for 8(a) BD program admission must be filed in the SBA Division of Program Certification and Eligibility (DPCE) field office serving the territory in which the principal place of business is located. The SBA district office will provide an applicant concern with information regarding the 8(a) BD program and with all required application forms.

**§ 124.203 What must a concern submit to apply to the 8(a) BD program?**

Each 8(a) BD applicant concern must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments will include, but not be limited to, financial statements, Federal personal and business tax returns, and personal history statements. An applicant must also submit IRS Form 4506, Request for Copy

or Transcript of Tax Form, to SBA. The application package may be in the form of an electronic application.

**§ 124.204 How does SBA process applications for 8(a) BD program admission?**

(a) The AA/8(a)BD is authorized to approve or decline applications for admission to the 8(a) BD program. The appropriate DPCE field office will receive, review and evaluate all 8(a) BD applications except those from ANC-owned applicants. SBA's Anchorage District Office will receive all applications from ANC-owned applicants and review them for completeness before sending them to the AA/8(a)BD for further processing. The appropriate field office will advise each program applicant within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) BD program participation within 90 days of receipt of a complete application package by the DPCE field office. Incomplete application packages will not be processed.

(b) SBA, in its sole discretion, may request clarification of information contained in the application at any time in the application process. SBA will take into account any clarifications made by an applicant in response to a request for such by SBA.

(c) An applicant concern's eligibility will be based on circumstances existing on the date of application, except where clarification is made pursuant to paragraph (b) of this section or as provided in paragraph (d) of this section.

(d) Changed circumstances for an applicant concern occurring subsequent to its application and which adversely affect eligibility will be considered and may constitute grounds for decline. The applicant must inform SBA of any changed circumstances that could adversely affect its eligibility for the program (particularly economic disadvantage and ownership and control) during its application review. Failure to inform SBA of any such changed circumstances constitutes good cause for which SBA may terminate the Participant if non-compliance is discovered after admittance.

(e) The decision of the AA/8(a)BD to approve or deny an application will be in writing. A decision to deny admission will state the specific reasons for denial, and will inform the applicant of any appeal rights.

(f) If the AA/8(a)BD approves the application, the date of the approval letter is the date of program certification for purposes of determining the concern's program term.

**§ 124.205 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?**

(a) An applicant may request the AA/8(a)BD to reconsider his or her initial decline decision by filing a request for reconsideration with the SBA field office that originally processed its application. Filing means submission by personal delivery, first-class mail, express mail, fascimile transmission followed by first-class mail, or commercial delivery service. The applicant must submit its request for reconsideration within 45 days of receiving notice that its application was declined. The applicant must provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline.

(b) The AA/8(a)BD will issue a written decision within 45 days of the regional DPCE's receipt of the applicant's request. The AA/8(a)BD may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the AA/8(a)BD will explain why the applicant is not eligible for admission to the 8(a) BD program and give specific reasons for the decline.

(c) If the AA/8(a)BD declines the application solely on issues not raised in the initial decline, the applicant can ask for reconsideration as if it were an initial decline.

**§ 124.206 What appeal rights are available to an applicant that has been denied admission?**

(a) An applicant may appeal a denial of program admission to SBA's Office of Hearings and Appeals (OHA), if it is based solely on a negative finding of social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria. A denial decision that is based at least in part on the failure to meet any other eligibility criterion is not appealable and is the final decision of SBA.

(b) The applicant may appeal an initial decision of the AA/8(a)BD without requesting reconsideration, or may appeal the decision of the AA/8(a)BD on reconsideration.

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this title with OHA within 45 days of the date of service (as defined in § 134.204) of the Agency decision.

(d) If an appeal is filed with OHA, the written decision of the Administrative Law Judge is the final Agency decision. If an appealable decision is not appealed, the decision of the AA/8(a)BD is the final Agency decision.

**§ 124.207 Can an applicant reapply for admission to the 8(a) BD program?**

A concern which has been declined for 8(a) BD program admission may submit a new application for admission to the program 12 months after the date of the final Agency decision to decline.

## Exiting the 8(a) BD Program

**§ 124.301 What are the ways a business may leave the 8(a) BD program?**

A concern participating in the 8(a) BD program may leave the program by any of the following means:

(a) Graduation upon the expiration of the program term established pursuant to § 124.2;

(b) Voluntary early graduation;

(c) Early graduation pursuant to the provisions of §§ 124.302 and 124.304; or

(d) Termination pursuant to the provisions of §§ 124.303 and 124.304.

**§ 124.302 What is early graduation?**

(a) *General.* SBA may graduate a firm from the 8(a) BD program prior to the expiration of its Program Term where SBA determines that:

(1) The concern has successfully completed the 8(a) BD program by substantially achieving the targets, objectives, and goals set forth in its business plan prior to the expiration of its program term, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program; or

(2) One or more of the disadvantaged owners upon whom the Participant's eligibility is based are no longer economically disadvantaged.

(b) *Criteria for determining whether a Participant has met its goals and objectives.* In determining whether a Participant has substantially achieved the targets, objectives and goals of its business plan and in assessing the overall competitive strength and viability of a Participant, SBA considers the totality of circumstances, including the following factors:

(1) Degree of sustained profitability;

(2) Sales trends, including improved ratio of non-8(a) sales to 8(a) sales since program entry;

(3) Business net worth, financial ratios, working capital, capitalization, and access to credit and capital;

(4) Current ability to obtain bonding;

(5) A comparison of the Participant's business and financial profiles with profiles of non-8(a) BD businesses having the same primary four-digit SIC code as the Participant;

(6) Strength of management experience, capability, and expertise; and

(7) Ability to operate successfully without 8(a) contracts.

(c) *Excessive withdrawals.* SBA may graduate a Participant prior to the expiration of its program term where excessive funds or other assets have been withdrawn from the Participant (see § 124.112(d)(3)), causing SBA to determine that the Participant has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program.

**§ 124.303 What is termination?**

(a) SBA may terminate the participation of a concern in the 8(a) BD program prior to the expiration of the concern's Program Term for good cause. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the concern's 8(a) BD application, regardless of whether correct information would have caused the concern to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means.

(2) Failure by the concern to maintain its eligibility for program participation.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.

(4) Failure by the concern to obtain prior written approval from SBA for any changes in ownership or business structure, management or control pursuant to §§ 124.105 and 124.106.

(5) Failure by the concern to disclose to SBA the extent to which non-disadvantaged persons or firms participate in the management of the Participant business concern.

(6) Failure by the concern or one or more of the concern's principals to maintain good character.

(7) A pattern of failure to make required submissions or responses to SBA in a timely manner, including a failure to provide required financial statements, requested tax returns, reports, updated business plans, information requested by SBA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(8) Cessation of business operations by the concern.

(9) Failure by the concern to pursue competitive and commercial business in accordance with its business plan, or failure in other ways to make reasonable efforts to develop and achieve competitive viability.

(10) A pattern of inadequate performance by the concern of awarded section 8(a) contracts.

(11) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(12) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

(13) Excessive withdrawals, including transfers of funds or other business assets, from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners that hinder the development of the concern (*see* § 124.112(d).

(14) Unauthorized use of SBA direct or guaranteed loan proceeds or violation of an SBA loan agreement.

(15) Submission by or on behalf of a Participant of false information to SBA, including false certification of compliance with non-8(a) business activity targets under § 124.507 or failure to report changes that adversely affect the program eligibility of an applicant or program participant under § 124.204 and § 124.112, where responsible officials of the 8(a) BD Participant knew or should have known the submission to be false.

(16) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to part 145 of this title or FAR subpart 9.4 (48 CFR part 9, subpart 9.4).

(17) Conduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to a criminal indictment or guilty plea, a criminal conviction, or a judgment or settlement in a civil case.

(18) Willful failure by the Participant business concern to comply with applicable labor standards and obligations.

(19) Material breach of any terms and conditions of the 8(a) BD Program Participation Agreement.

(20) Willful violation by a concern, or any of its principals, of any SBA regulation pertaining to material issues.

(b) The examples of good cause listed in paragraph (a) of this section are intended to be illustrative only. Other grounds for terminating a Participant from the 8(a) BD program for cause may exist and may be used by SBA.

**§ 124.304 What are the procedures for early graduation and termination?**

(a) *General.* The same procedures apply to both early graduation and termination of Participants from the 8(a) BD program.

(b) *Letter of Intent to Terminate or Graduate Early.* When SBA believes that a Participant should be terminated or graduated prior to the expiration of its program term, SBA will notify the concern in writing. The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date of service (as defined in § 134.204 of this title) of the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation. Service is defined in § 134.204.

(c) *Recommendation and decision.* Following the 30-day response period, the Assistant Administrator for DPCE (AA/DPCE) or designee will consider the proposed early graduation or termination and any information submitted in response by the concern. Upon determining that early graduation or termination is not warranted, the AA/DPCE or designee will notify the Participant in writing. If early graduation or termination appears warranted, the AA/DPCE will make such a recommendation to the AA/8(a)BD, who will then make a decision whether to early graduate or terminate the concern. SBA will act in a timely manner in processing early graduation and termination actions.

(d) *Notice requirements.* Upon deciding that early graduation or termination is warranted, the AA/8(a)BD will issue a Notice of Early Graduation or Termination. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may appeal the decision in accordance with the provisions of part 134 of this title.

(e) *Appeal to OHA.* Procedures governing appeals of early graduation or termination to SBA's OHA are set forth in part 134. If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days of the date of service (as defined in § 134.204), the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

(f) *Effect of early graduation or termination.* After the effective date of early graduation or termination, a Participant is no longer eligible to receive any 8(a) BD program assistance. However, such concern is obligated to complete previously awarded 8(a) contracts, including any priced options which may be exercised.

**§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?**

(a) At any time after SBA issues a Letter of Intent to Terminate pursuant to § 124.304, the AA/8(a)BD may suspend 8(a) contract support and all other forms of 8(a) BD program assistance to that concern until the issue of the concern's termination from the program is finally decided. The AA/8(a)BD may suspend a Participant when he or she determines that suspension is needed to protect the interests of the Federal Government, such as where information showing a clear lack of program eligibility or conduct indicating a lack of business integrity exists, including where the concern or one of its principals submitted false statements to the Federal Government. SBA will suspend a Participant where SBA determines that the Participant submitted false information in its 8(a) BD application.

(b) SBA will issue a Notice of Suspension to the Participant's last known address by certified mail, return receipt requested. Suspension is effective as of the date of the issuance of the Notice. The Notice will provide the following information:

(1) The basis for the suspension;

(2) A statement that the suspension will continue pending the completion of further investigation, a final program termination determination, or some other specified period of time;

(3) A statement that awards of competitive and non-competitive 8(a) contracts, including those which have been ''self-marketed'' by a Participant, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or an authorized representative to be in the best interest of the Government to do so, and SBA adopts that determination;

(4) A statement that the concern is obligated to complete previously awarded section 8(a) contracts;

(5) A statement that the suspension is effective nationally throughout SBA;

(6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge at OHA, and granted or denied as a matter of discretion.

(7) A statement that the firm's participation in the program is suspended effective on the date the Notice is served, and that the program term will resume only if the suspension is lifted or the firm is not terminated.

(c) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this title with OHA within 45 days of the date of service (as defined in § 134.204) of a Notice of Suspension pursuant to paragraph (b) of this section. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the Participant requests one, but authority to grant a hearing is within the discretion of the Administrative Law Judge in OHA. A suspension remains in effect pending the result of its appeal.

(d) SBA has the burden of showing that adequate evidence exists that protection of the Federal Government's interest requires suspension before OHA or the AA/8(a)BD makes a final determination regarding the termination action.

(1) The term ''adequate evidence'' means information contained in the record before the AA/8(a)BD at the time of his or her suspension decision that is sufficient to support the reasonable belief that the Government's interests need to be protected.

(2) SBA need not demonstrate that an act or omission actually occurred in order for OHA to uphold a suspension. SBA's burden in a suspension proceeding is limited to demonstrating that it had a reasonable belief that a particular act or omission occurred, and that that act or omission requires suspension to protect the interests of the Government.

(3) Unless the Administrative Law Judge consolidates the suspension and termination proceedings, OHA's review is limited to determining whether the Government's interests need to be protected, and will not consider the merits of the termination action.

(e) If there is a timely appeal, the decision of the Administrative Law Judge is the final SBA decision. If there is not a timely appeal, the decision of the AA/8(a)BD is the final Agency decision.

(f) Upon the request of SBA, OHA may consolidate suspension and termination proceedings when the issues presented are identical.

(g) Any program suspension which occurs under this section is effective until such time as SBA lifts the suspension or the Participant's participation in the program is fully terminated. If the concern is ultimately not terminated from the 8(a) BD program, the suspension will be lifted and the length of the suspension will be added to the concern's program term.

(h) SBA may suspend a Participant from program benefits where a change of ownership or business structure has been requested if ownership or control of the participant changed prior to SBA's approval pending resolution of the request to change its ownership or control. If the change of ownership is approved, the length of the suspension will be added to the firm's program term where the change in ownership results from the death or incapacity of a disadvantaged individual or where the firm requested prior approval and waited 60 days for SBA approval before making the change. The suspension will be commenced by the issuance of a notice similar to that required for termination-related suspensions under paragraph (b) of this section, except that a change of ownership suspension is not appealable.

(i) SBA does not recognize the concept of de facto suspension. Adding time to the end of a Participant's program term equal to the length of a suspension will occur only where a concern's program participation has been formally suspended in accordance with the procedures set forth in this section.

(j) A suspension from 8(a) BD participation under this section has no effect on a concern's eligibility for non-8(a) Federal Government contracts. However, a debarment or suspension under the Federal Acquisition Regulation (48 CFR, chapter 1) will disqualify a concern from receiving all Federal Government contracts, including 8(a) contracts.

## Business Development

**§ 124.401 Which SBA field office services a Participant?**

The SBA district office which serves the geographical territory where a Participant's principal place of business is located normally will service the concern during its participation in the 8(a) BD program.

**§ 124.402 How does a Participant develop a business plan?**

(a) *General.* In order to assist the SBA servicing office in determining the business development needs of its portfolio Participants, each Participant must develop a comprehensive business plan setting forth its business targets, objectives, and goals.

(b) *Submission of initial business plan.* Each Participant must submit a business plan to its SBA servicing office as soon as possible after program admission. The Participant will not be eligible for 8(a) BD program benefits, including 8(a) contracts, until SBA approves its business plan.

(c) *Contents of business plan.* The business plan must contain at least the following:

(1) A detailed description of any products currently being produced and any services currently being performed by the concern, as well as any future

plans to enter into one or more new markets;

(2) The applicant's designation of its primary industry classification, as defined in § 124.3;

(3) An analysis of market potential, competitive environment, and the concern's prospects for profitable operations during and after its participation in the 8(a) BD program;

(4) An analysis of the concern's strengths and weaknesses, with particular attention on ways to correct any financial, managerial, technical, or work force conditions which could impede the concern from receiving and performing non-8(a) contracts;

(5) Specific targets, objectives, and goals for the business development of the concern during the next two years;

(6) Estimates of both 8(a) and non-8(a) contract awards that will be needed to meet its targets, objectives and goals; and

(7) Such other information as SBA may require.

**§ 124.403 How is a business plan updated and modified?**

(a) *Annual review.* Each Participant must annually review its business plan with its assigned Business Opportunity Specialist (BOS), and modify the plan as appropriate. The Participant must submit a modified plan and updated information to its BOS within thirty (30) days after the close of each program year. It also must submit a capability statement describing its current contract performance capabilities as part of its updated business plan.

(b) *Contract forecast.* As part of the annual review of its business plan, each Participant must annually forecast in writing its needs for contract awards for the next program year. The forecast must include:

(1) The aggregate dollar value of 8(a) contracts to be sought, broken down by sole source and competitive opportunities where possible;

(2) The aggregate dollar value of non-8(a) contracts to be sought;

(3) The types of contract opportunities to be sought, identified by product or service; and

(4) Such other information as SBA may request to aid in providing effective business development assistance to the Participant.

(c) *Transition management strategy.* Beginning in the first year of the transitional stage of program participation, each Participant must annually submit a transition management strategy to be incorporated into its business plan. The transition management strategy must describe:

(1) How the Participant intends to meet the applicable non-8(a) business activity target imposed by § 124.507 during the transitional stage of participation; and

(2) The specific steps the Participant intends to take to continue its business growth and promote profitable business operations after the expiration of its program term.

**§ 124.404 What business development assistance is available to Participants during the two stages of participation in the 8(a) BD program?**

(a) *General.* Participation in the 8(a) BD program is divided into two stages, a developmental stage and a transitional stage. The developmental stage will last four years, and the transitional stage will last five years, unless the concern has exited the program by one of the means set forth in § 124.301 prior to the expiration of its program term.

(b) *Developmental stage of program participation.* A Participant, if otherwise eligible, may receive the following assistance during the developmental stage of program participation:

(1) Sole source and competitive 8(a) contract support;

(2) Financial assistance pursuant to § 120.375 of this title;

(3) The transfer of technology or surplus property owned by the United States pursuant to § 124.405; and

(4) Training to aid in developing business principles and strategies to enhance their ability to compete successfully for both 8(a) and non-8(a) contracts.

(c) *Transitional stage of program participation.* A Participant, if otherwise eligible, may receive the following assistance during the transitional stage of program participation:

(1) The same assistance as that provided to Participants in the developmental stage;

(2) Assistance from procuring agencies (in cooperation with SBA) in forming joint ventures, leader-follower arrangements, and teaming agreements between the concern and other Participants or other business concerns with respect to contracting opportunities outside the 8(a) BD program for research, development, or full scale engineering or production of major systems (these arrangements must comply with all relevant statutes and regulations, including applicable size standard requirements); and

(3) Training and technical assistance in transitional business planning.

**§ 124.405 How does a Participant obtain Federal Government surplus property?**

(a) *General.* (1) Pursuant to 15 U.S.C. 636(j)(13)(F), eligible Participants may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR Part 101–44 and this section will be used to transfer surplus property to eligible Participants.

(2) The property which may be transferred to SASPs for further transfer to eligible Participants includes all personal property which has been determined to be ''donable'' as defined in 41 CFR 101–44.001–3.

(b) *Eligibility to receive Federal surplus property.* To be eligible to receive Federal surplus property, on the date of transfer a concern must:

(1) Be in the 8(a) BD program;

(2) Be in compliance with all program requirements, including any reporting requirements;

(3) Not be debarred, suspended, or declared ineligible under part 9, subpart 9.4 of the Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations;

(4) Not be under a pending 8(a) BD program suspension, termination or early graduation proceeding; and

(5) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus property.* (1) Eligible Participants may acquire surplus Federal property from any SASP located in any state, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus property is to be and that this use is consistent with the objectives of the concern's 8(a) business plan;

(ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government during its term of participation in the 8(a) program and for one year after it leaves the program;

(iv) That, at its own expense, it will return the property to a SASP or transfer it to another Participant if directed to do so by SBA because it has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give SBA access to inspect the property and all records pertaining to it.

(2) A firm receiving surplus property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(3) If the property is not placed in use for the purposes for which it was intended within one year of its receipt, SBA may direct the concern to deliver the property to another Participant or to the SASP from which it was acquired.

(4) Failure to comply with any of the commitments made under paragraph (c)(1) of this section constitutes a basis for termination from the 8(a) program.

(d) *Procedures for acquiring Federal Government surplus property.* (1) Participants may participate in the surplus property distribution program administered by the SASPs to the same extent, but with no special priority over, other authorized transferees. *See* 41 CFR subpart 101–44.2.

(2) Each Participant seeking to acquire Federal Government surplus property from a SASP must:

(i) Certify in writing to the SASP that it is eligible to receive the property pursuant to paragraph (b) of this section;

(ii) Make the written representations and agreement required by paragraph (c)(1) of this section; and

(iii) Identify to the SASP its servicing SBA field office.

(3) Upon receipt of the required certification, representations, agreement, and information set forth in paragraph (d)(2) of this section, the SASP must contact the appropriate SBA field office and obtain SBA's verification that the concern seeking to acquire the surplus property is eligible, and that the identified use of the property is consistent with the concern's business activities. SASPs may not release property to a Participant without this verification.

(4) The SASP and the Participant must agree on and record the fair market value of the surplus property at the time of the transfer to the Participant. The SASP must provide to SBA a written record, including the agreed upon fair market value, of each transaction to a Participant when any property has been transferred.

(e) *Costs.* Participants acquiring surplus property from a SASP must pay a service fee to the SASP which is equal to the SASP's direct costs of locating, inspecting, and transporting the surplus property. If a Participant elects to incur the responsibility and the expense for transporting the acquired property, the concern may do so and no transportation costs will be charged by the SASP. In addition, the SASP may charge a reasonable fee to cover its costs of administering the program. In no instance will any SASP charge a Participant more for any service than their established fees charged to other transferees.

(f) *Title.* The title to surplus property acquired from a SASP will pass to the Participant when the Participant executes the applicable SASP distribution documents and takes possession of the property.

(g) *Compliance.* (1) SBA will periodically review whether Participants that have received surplus property have used and maintained the property as agreed. This review may include site visits to visually inspect the property to ensure that it is being used in a manner consistent with the terms of its transfer.

(2) Participants must provide SBA with access to all relevant records upon request.

(3) Where SBA receives credible information that transferred surplus property may have been disposed of or otherwise used in a manner that is not consistent with the terms of the transfer, SBA may investigate such claim to determine its validity.

(4) SBA may take any action to correct any noncompliance involving the use of transferred property still in possession of the Participant or to enforce any terms, conditions, reservations, or restrictions imposed on the property by the distribution document. Actions to enforce compliance, or which may be taken as a result of noncompliance, include the following:

(i) Requiring that the property be placed in proper use within a specified time;

(ii) Requiring that the property be transferred to another Participant having a need and use for the property, returned to the SASP serving the area where the property is located for distribution to another eligible transferee or to another SASP, or transferred through GSA to another Federal agency;

(iii) Recovery of the fair rental value of the property from the date of its receipt by the Participant; and

(iv) Initiation of proceedings to terminate the Participant from the 8(a) BD program.

(5) Where SBA finds that a recipient has sold or otherwise disposed of the acquired surplus property in violation of the agreement covering sale and disposal, the Participant is liable for the agreed upon fair market value of the property at the time of the transfer, or the sale price, whichever is greater. However, a Participant need not repay any amount where it can demonstrate to SBA's satisfaction that the property is no longer useful for the purpose for which it was transferred and receives SBA's prior written consent to transfer the property. For example, if a piece of equipment breaks down beyond repair, it may be disposed of without being subject to the repayment provision, so long as the concern receives SBA's prior consent.

(6) Any funds received by SBA in enforcement of this section will be remitted promptly to the Treasury of the United States as miscellaneous receipts.

## Contractual Assistance

### § 124.501 What general provisions apply to the award of 8(a) contracts?

(a) Pursuant to section 8(a) of the Small Business Act, SBA is authorized to enter into all types of contracts with other Federal agencies, including contracts to furnish equipment, supplies, services, leased real property, or materials to them or to perform construction work for them, and to contract the performance of these contracts to qualified Participants. Where practicable, simplified acquisition procedures should be used for 8(a) contracts at or below the simplified acquisition threshold. Where appropriate, SBA will delegate the contract execution function to procuring activities. In order to receive and retain a delegation of SBA's contract execution and review functions, a procuring activity must report all 8(a) contract awards, modifications, and options to SBA.

(b) 8(a) contracts may either be sole source awards or awards won through competition with other Participants.

(c) Admission into the 8(a) BD program does not guarantee that a Participant will receive 8(a) contracts.

(d) A requirement for possible award may be identified by SBA, a particular Participant or the procuring activity itself. SBA will submit the capability statements provided to SBA annually under § 124.403 to appropriate procuring activities for the purpose of matching requirements with Participants.

(e) Participants should market their capabilities to appropriate procuring activities to increase their prospects of receiving sole source 8(a) contracts.

(f) An 8(a) participant that identifies a requirement that appears suitable for award through the 8(a) BD program may request SBA to contact the procuring activity to request that the requirement be offered to the 8(a) BD program.

(g) A concern must be a current Participant in the 8(a) BD program at the time of award, except as provided in § 124.507(d).

(h) A Participant must certify that it is a small business under the size

standard corresponding to the SIC code assigned to each 8(a) contract. 8(a) BD program personnel will verify size prior to award of an 8(a) contract. If the Participant is not verified as small, it may request a formal size determination from the appropriate General Contracting Area Office under part 121 of this title.

(i) Any person or entity that misrepresents its status as a ''small business concern owned and controlled by socially and economically disadvantaged individuals'' in order to obtain any 8(a) contracting opportunity will be subject to possible criminal, civil and administrative penalties, including those imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d).

**§ 124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?**

(a) A procuring activity contracting officer indicates his or her formal intent to award a procurement requirement as an 8(a) contract by submitting a written offering letter to SBA. The procuring activity may transmit the offering letter to SBA by electronic mail, if available, or by facsimile transmission, as well as by mail or commercial delivery service.

(b) Contracting officers must submit offering letters to the following locations:

(1) For competitive 8(a) requirements and those sole source requirements for which no specific Participant is nominated (i.e., open requirements) other than construction requirements, to the SBA district office serving the geographical area in which the procuring activity is located;

(2) For competitive and open construction requirements, to the SBA district office serving the geographical area in which the work is to be performed or, in the case of such contracts to be performed overseas, to the Office of 8(a) BD located in SBA Headquarters;

(3) For sole source requirements offered on behalf of a specific Participant, to the SBA district office servicing that concern.

(c) An offering letter must contain the following information:

(1) A description of the work to be performed;

(2) The estimated period of performance;

(3) The SIC code that applies to the principal nature of the acquisition;

(4) The anticipated dollar value of the requirement, including options, if any;

(5) Any special restrictions or geographical limitations on the requirement;

(6) The location of the work to be performed for construction procurements;

(7) Any special capabilities or disciplines needed for contract performance;

(8) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials;

(9) The acquisition history, if any, of the requirement;

(10) The names and addresses of any small business contractors which have performed on this requirement during the previous 24 months;

(11) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business set-aside, or as a small disadvantaged business set-aside if applicable, and that no other public communication (such as a notice in the Commerce Business Daily) has been made showing the procuring activity's clear intent to use any of these means of procurement;

(12) Identification of any specific Participant that the procuring activity contracting officer nominates for award of a sole source 8(a) contract, if appropriate, including a brief justification for the nomination, such as one of the following:

(i) The Participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) BD program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent;

(13) Bonding requirements, if applicable;

(14) Identification of all Participants which have expressed an interest in being considered for the acquisition;

(15) Identification of all SBA field offices which have requested that the requirement be awarded through the 8(a) BD program;

(16) A request, if appropriate, that a requirement whose estimated contract value is under the applicable competitive threshold be awarded as an 8(a) competitive contract; and

(17) Any other information that the procuring activity deems relevant or which SBA requests.

**§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?**

(a) *Acceptance of the requirement.* Upon receipt of the procuring activity's offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) BD program. SBA's decision whether to accept the requirement will be sent to the procuring activity in writing within 10 working days of receipt of the written offering letter if the contract is valued at more than the simplified acquisition threshold, and within two days of receipt of the offering letter if the contract is valued at or below the simplified acquisition threshold, unless SBA requests, and the procuring activity grants, an extension. SBA is not required to accept any particular procurement offered to the 8(a) BD program.

(1) Where SBA decides to accept an offering of a sole source 8(a) procurement, SBA will accept the offer both on behalf of the 8(a) BD program and in support of a specific Participant.

(2) Where SBA decides to accept an offering of a competitive 8(a) procurement, SBA will accept the offer on behalf of the 8(a) BD program.

(3) Where SBA has delegated its contract execution functions to a procuring activity, the procuring activity may assume that SBA accepts its offer for the 8(a) program if the procuring activity does not receive a reply to its offer within five days.

(4) In the case of procurement requirements valued at or below the Simplified Acquisition Procedures threshold:

(i) Where a procuring activity makes an offer to the 8(a) program on behalf of a specific Program Participant and does not receive a reply to its offer within two days, the procuring activity may assume the offer is accepted and proceed with award of an 8(a) contract;

(ii) Where SBA has delegated its 8(a) contract execution functions to an agency, SBA may authorize the procuring activity to award an 8(a) contract without requiring an offer and acceptance of the requirement for the 8(a) program. In such a case, the procuring activity must notify SBA of all 8(a) awards made under this authority.

(5) Where SBA does not respond to an offering letter within the normal 10-day time period, the procuring activity may seek SBA's acceptance through the AA/8(a)BD. The procuring activity may assume that SBA accepts its offer for the 8(a) program if it does not receive a reply from the AA/8(a)BD within 5 days of his or her receipt of the procuring activity request.

(b) *Verification of SIC code.* As part of the acceptance process, SBA will verify the appropriateness of the SIC code designation assigned to the requirement by the procuring activity contracting officer.

(1) SBA will accept the SIC code assigned to the requirement by the procuring activity contracting officer as

long as it is reasonable, even though other SIC codes may also be reasonable.

(2) If SBA and the procuring activity are unable to agree as to the proper SIC code designation for the requirement, SBA may either refuse to accept the requirement for the 8(a) BD program, appeal the contracting officer's determination to the head of the agency pursuant to § 124.505, or appeal the SIC code designation to OHA under part 134 of this title.

(c) *Sole source award where procuring activity nominates a specific Participant.* SBA will determine whether an appropriate match exists where the procuring activity identifies a particular Participant for a sole source award.

(1) Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the Participant recommended by the procuring activity, provided that:

(i) The procurement is consistent with the Participant's business plan;

(ii) The Participant complies with its applicable non-8(a) business activity target imposed by § 124.509(d);

(iii) The Participant is small for the size standard corresponding to the SIC code assigned to the requirement by the procuring activity contracting officer; and

(iv) The Participant has submitted required financial statements to SBA.

(2) If an appropriate match exists, SBA will advise the procuring activity whether SBA will participate in contract negotiations or whether SBA will authorize the procuring activity to negotiate directly with the identified Participant. Where SBA has delegated its contract execution functions to a procuring activity, SBA will also identify that delegation in its acceptance letter.

(3) If an appropriate match does not exist, SBA will notify the Participant and the procuring activity, and may then nominate an alternate Participant.

(d) *Open requirements.* When a procuring activity does not nominate a particular concern for performance of a sole source 8(a) contract (open requirement), the following additional procedures will apply:

(1) If the procurement is a construction requirement, SBA will examine the portfolio of Participants that have a bona fide place of business within the geographical boundaries served by the SBA district office where the work is to be performed to select a qualified Participant. If none is found to be qualified or a match for a concern in that district is determined to be impossible or inappropriate, SBA may nominate a Participant with a bona fide place of business within the geographical boundaries served by another district office within the same state, or may nominate a Participant having a bona fide place of business out of state but within a reasonable proximity to the work site. SBA's decision will ensure that the nominated Participant is close enough to the work site to keep costs of performance reasonable.

(2) If the procurement is not a construction requirement, SBA may select any eligible, responsible Participant nationally to perform the contract.

(3) In cases in which SBA selects a Participant for possible award from among two or more eligible and qualified Participants, the selection will be based upon relevant factors, including business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, technical capability, and whether award will promote the equitable distribution of 8(a) contracts.

(e) *Formal technical evaluations.* Except for requirements for architectural and engineering services, SBA will not authorize formal technical evaluations for sole source 8(a) requirements. A procuring activity:

(1) Must request that a procurement be a competitive 8(a) award if it requires formal technical evaluations of more than one Participant for a requirement below the applicable competitive threshold amount; and

(2) May conduct informal assessments of several Participants' capabilities to perform a specific requirement, so long as the statement of work for the requirement is not released to any of the Participants being assessed.

(f) *Repetitive acquisitions.* A procuring activity contracting officer must submit a new offering letter to SBA where he or she intends to award a follow-on or repetitive contract as an 8(a) award. This enables SBA to determine:

(1) Whether the requirement should be a competitive 8(a) award;

(2) A nominated firm's eligibility, whether or not it is the same firm that performed the previous contract;

(3) The affect that contract award would have on the equitable distribution of 8(a) contracts; and

(4) Whether the requirement should continue under the 8(a) BD program.

(g) *Basic Ordering Agreements (BOAs).* A Basic Ordering Agreement (BOA) is not a contract under the FAR. See 48 CFR 16.703(a). Each order to be issued under the BOA is an individual contract. As such, the procuring activity must offer, and SBA must accept, each task order under a BOA in addition to offering and accepting the BOA itself.

(1) SBA will not accept for award on a sole source basis any task order under a BOA that would cause the total dollar amount of task orders issued to exceed the applicable competitive threshold amount set forth in § 124.506(a).

(2) Where a procuring activity believes that task orders to be issued under a proposed BOA will exceed the applicable competitive threshold amount set forth in § 124.506(a), the procuring activity must offer the requirement to the program to be competed among eligible Participants.

(3) Once a concern's program term expires, the concern otherwise exits the 8(a) BD program, or becomes other than small for the SIC code assigned under the BOA, new orders will not be accepted for the concern.

(h) *Multiple Award and Federal Supply Schedule Contracts.* Unlike Basic Ordering Agreements, Multiple Award and Federal Supply Schedule contracts are contracts. Orders issued under these contracts are not considered separate contracts. As such, SBA's acceptance of the original Multiple Award or Federal Supply Schedule contract is valid for the duration of the contract. Separate offers and acceptances will not be made for individual task orders under these contracts.

(1) Task orders are not required to be competed where the value of the task order will exceed the competitive threshold as long as the original contract was competed.

(2) A concern may continue to accept new orders under a Multiple Award or Federal Supply Schedule contract even where a concern's program term expires, the concern otherwise exits the 8(a) BD program, or the concern becomes other than small for the SIC code assigned under the contract subsequent to award of the contract.

(i) Requirements where SBA has delegated contract execution authority. Except as provided in paragraph (a)(4)(i) of this section, where SBA has delegated its 8(a) contract execution authority to the procuring activity, the procuring activity must still offer and SBA must still accept all requirements intended to be awarded as 8(a) contracts.

**§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?**

SBA will not accept a procurement for award as an 8(a) contract if the circumstances identified in paragraphs (a) through (d) of this section exist.

(a) *Reservation as small business or SDB set-aside.* The procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business or small disadvantaged business (SDB) set-aside prior to offering the requirement to SBA for award as an 8(a) contract. The AA/8(a)BD may permit the acceptance of the requirement, however, under extraordinary circumstances.

**Example to paragraph (a).** SBA may accept a requirement where a procuring activity made a decision to offer the requirement to the 8(a) BD program before the solicitation was sent out and the procuring activity acknowledges and documents that the solicitation was in error.

(b) *Competition prior to offer and acceptance.* The procuring activity competed a requirement among Participants prior to offering the requirement to SBA and receiving SBA's formal acceptance of the requirement.

(1) Any competition conducted without first obtaining SBA's formal acceptance of the procurement for the 8(a) BD program will not be considered an 8(a) competitive requirement.

(2) SBA may accept the requirement for the 8(a) BD program as a competitive 8(a) requirement, but only if the procuring activity agrees to resolicit the requirement using appropriate competitive 8(a) procedures.

(c) *Adverse impact.* SBA has made a written determination that acceptance of the procurement for 8(a) award would have an adverse impact on an individual small business, a group of small businesses located in a specific geographical location, or other small business programs. The adverse impact concept is designed to protect small business concerns which are performing Government contracts awarded outside the 8(a) BD program, and does not apply to follow-on or renewal 8(a) acquisitions. SBA will not consider adverse impact with respect to any requirement offered to the 8(a) program under Simplified Acquisition Procedures.

(1) In determining whether the acceptance of a requirement would have an adverse impact on an individual small business, SBA will consider all relevant factors.

(i) In connection with a specific small business, SBA presumes adverse impact to exist where:

(A) The small business concern has performed the specific requirement for at least 24 months;

(B) The small business is performing the requirement at the time it is offered to the 8(a) BD program, or its performance of the requirement ended within 30 days of the procuring activity's offer of the requirement to the 8(a) BD program; and

(C) The dollar value of the requirement that the small business is or was performing is 25 percent or more of its most recent annual gross sales (including those of its affiliates). For a multi-year requirement, the dollar value of the last 12 months of the requirement will be used to determine whether a small business would be adversely affected by SBA's acceptance.

(ii) Except as provided in paragraph (c)(2) of this section, adverse impact does not apply to ''new'' requirements. A new requirement is one which has not been previously procured by the relevant procuring activity.

(A) Where a requirement is new, no small business could have previously performed the requirement and, thus, SBA's acceptance of the requirement for the 8(a) BD program will not adversely impact any small business.

(B) Construction contracts, by their very nature (e.g., the building of a specific structure), are deemed new requirements.

(C) The expansion or modification of an existing requirement will be considered a new requirement where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation) or to require significant additional or different types of capabilities or work.

(D) SBA need not perform an impact determination where a new requirement is offered to the 8(a) BD program.

(2) In determining whether the acceptance of a requirement would have an adverse impact on a group of small businesses, SBA will consider the effects of combining or consolidating various requirements being performed by two or more small business concerns into a single contract which would be considered a ''new'' requirement as compared to any of the previous smaller requirements. SBA may find adverse impact to exist if one of the existing small business contractors meets the presumption set forth in paragraph (c)(1)(i) of this section.

(3) In determining whether the acceptance of a requirement would have an adverse impact on other small business programs, SBA will consider all relevant factors, including but not limited to, the number and value of contracts in the subject industry reserved for the 8(a) BD program as compared with other small business programs.

(d) *Release for non-8(a) competition.* In limited instances, SBA may decline to accept the offer of a follow-on or renewal 8(a) acquisition to give a concern previously awarded the contract that is leaving or has left the 8(a) BD program the opportunity to compete for the requirement outside the 8(a) BD program.

(1) SBA will consider release only where:

(i) The procurement awarded through the 8(a) BD program is being or was performed by either a Participant whose program term will expire prior to contract completion, or, by a former Participant whose program term expired within one year of the date of the offering letter;

(ii) The concern requests in writing that SBA decline to accept the offer prior to SBA's acceptance of the requirement for award as an 8(a) contract; and

(iii) The concern qualifies as a small business for the requirement now offered to the 8(a) BD program.

(2) In considering release, SBA will balance the importance of the requirement to the concern's business development needs against the business development needs of other Participants that are qualified to perform the requirement. This determination will include consideration of whether rejection of the requirement would seriously reduce the pool of similar types of contracts available for award as 8(a) contracts. SBA will seek the views of the procuring activity.

(3) If SBA declines to accept the offer and releases the requirement, it will recommend to the procuring activity that the requirement be procured as a small business or, if authorized, an SDB set-aside.

### § 124.505 When will SBA appeal the terms or conditions of a particular 8(a) contract or a procuring activity decision not to reserve a requirement for the 8(a) BD program?

(a) *What SBA may appeal.* The Administrator of SBA may appeal the following matters to the head of the procuring agency:

(1) A contracting officer's decision not to make a particular procurement available for award as an 8(a) contract;

(2) A contracting officer's decision to reject a specific Participant for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) BD program; and

(3) The terms and conditions of a proposed 8(a) contract, including the procuring activity's SIC code designation and estimate of the fair market price.

(b) *Procedures for appeal.* (1) SBA must notify the contracting officer of the SBA Administrator's intent to appeal an adverse decision within 5 working days of SBA's receipt of the decision.

(2) Upon receipt of the notice of intent to appeal, the procuring activity must suspend further action regarding the procurement until the head of the procuring agency issues a written decision on the appeal, unless the head of the procuring agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a consideration of the appeal.

(3) The SBA Administrator must send a written appeal of the adverse decision to the head of the procuring agency within 15 working days of SBA's notification of intent to appeal or the appeal may be considered withdrawn.

(4) By statute (15 U.S.C. 637(a)(1)(A)), the procuring agency head must specify in writing the reasons for a denial of an appeal brought by the Administrator under this section.

**§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?**

(a) *Competitive thresholds.* (1) A procurement offered and accepted for the 8(a) BD program must be competed among eligible Participants if:

(i) There is a reasonable expectation that at least two eligible Participants will submit offers at a fair market price;

(ii) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing SIC codes and $3,000,000 for all other contracts; and

(iii) The requirement has not been accepted by SBA for award as a sole source 8(a) procurement on behalf of a tribally-owned or ANC-owned concern.

(2) For all types of contracts, the applicable competitive threshold amounts will be applied to the procuring activity estimate of the total value of the contract, including all options. For indefinite delivery or indefinite quantity type contracts, the thresholds are applied to the maximum order amount authorized.

(3) Where the estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold amount and the requirement is accepted as a sole source requirement on that basis, award may be made even though the contract price arrived at through negotiations exceeds the competitive threshold, provided that the contract price is not more than ten percent greater than the competitive threshold amount.

**Example to paragraph (a)(3).** If the anticipated award price for a professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(4) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount may not be divided into several separate procurement actions for lesser amounts in order to use 8(a) sole source procedures to award to a single contractor.

(b) *Exemption from competitive thresholds for Participants owned by Indian tribes.* SBA may award a sole source 8(a) contract to a Participant concern owned and controlled by an Indian tribe or an ANC where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement. There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a tribally-owned or ANC-owned concern, but a procurement may not be removed from competition to award it to a tribally-owned or ANC-owned concern on a sole source basis.

(c) *Competition below thresholds.* The AA/8(a)BD, on a nondelegable basis, may approve a request from a procuring activity to compete a requirement that is below the applicable competitive threshold amount among eligible Participants.

(1) This authority will be used primarily when technical competitions are appropriate or when a large number of potential awardees exist.

(2) The AA/8(a)BD may consider whether the procuring activity has made and will continue to make available a significant number of its contracts to the 8(a) BD program on a noncompetitive basis.

(3) The AA/8(a)BD may deny a request if the procuring activity previously offered the requirement to the 8(a) BD program on a noncompetitive basis and the request is made following the inability of the procuring activity and the potential sole source awardee to reach an agreement on price or some other material term or condition.

(d) *Sole source above thresholds.* Where a contract opportunity exceeds the applicable threshold amount and there is not a reasonable expectation that at least two eligible 8(a) Participants will submit offers at a fair price, the AA/8(a)BD may accept the requirement for a sole source 8(a) award if he or she determines that an eligible Participant in the 8(a) portfolio is capable of performing the requirement at a fair price.

**§ 124.507 What procedures apply to competitive 8(a) procurements?**

(a) *FAR procedures.* Procuring activities will conduct competitions among and evaluate offers received from Participants in accordance with the Federal Acquisition Regulation (48 CFR, chapter 1).

(b) *Eligibility determination by SBA.* In either a negotiated or sealed bid competitive 8(a) acquisition, the procuring activity will request that the SBA district office servicing the apparent successful offeror determine that firm's eligibility for award.

(1) Within 5 working days after receipt of a procuring activity's request for an eligibility determination, SBA will determine whether the firm identified by the procuring activity is eligible for award.

(2) Eligibility is based on 8(a) BD program criteria, including whether the Participant is:

(i) A small business under the SIC code assigned to the requirement;

(ii) In compliance with any applicable competitive business mix target established or remedial measure imposed by § 124.509 that does not include the denial of future 8(a) contracts;

(iii) In the developmental stage of program participation if the solicitation restricts offerors to the developmental stage of participation; and

(iv) A concern with a bona fide place of business in the applicable geographic area if the procurement is for construction.

(3) If SBA determines that the apparent successful offeror is ineligible, SBA will notify the procuring activity. The procuring activity will then send to SBA the identity of the next highest evaluated firm for an eligibility determination. The process is repeated until SBA determines that an identified offeror is eligible for award.

(4) Except to the extent set forth in paragraph (d) of this section, SBA determines whether a Participant is eligible for a specific 8(a) competitive requirement as of the date that the Participant submitted its initial offer which includes price.

(5) If the procuring activity contracting officer believes that the apparent successful offeror is not responsible to perform the contract, he or she must refer the concern to SBA for a possible Certificate of Competency in accord with § 125.5 of this title.

(c) *Restricted competition.* (1) *Competition within stages of program participation.* SBA may accept a competitive 8(a) requirement that is limited to Participants in the developmental stage of program

participation, or may accept a requirement to be competed among firms both in the developmental and transitional stages of program participation.

(2) *Construction competitions.* Based on its knowledge of the 8(a) BD portfolio, SBA will determine whether a competitive 8(a) construction requirement should be competed among only those Participants having a bona fide place of business within the geographical boundaries of one or more SBA district offices, within a state, or within the state and nearby areas. Only those Participants with bona fide places of business within the appropriate geographical boundaries are eligible to submit offers.

(3) *Competition for all non-construction requirements.* Except for construction requirements, all eligible Participants regardless of location may submit offers in response to competitive 8(a) solicitations. The only geographic restrictions pertaining to 8(a) competitive requirements, other than those for construction requirements, are any imposed by the solicitations themselves.

(d) *Award to firms whose program terms have expired.* A concern that has completed its term of participation in the 8(a) BD program may be awarded a competitive 8(a) contract if it was a Participant eligible for award of the contract on the initial date specified for receipt of offers contained in the contract solicitation, and if it continues to meet all other applicable eligibility criteria.

(1) Amendments to the solicitation extending the date for submissions of offers will be disregarded.

(2) For a negotiated procurement, a Participant may submit revised offers, including a best and final offer, and be awarded a competitive 8(a) contract if it was eligible as of the initial date specified for the receipt of offers in the solicitation, even though its program term may expire after that date.

**§ 124.508 How is an 8(a) contract executed?**

(a) An 8(a) contract can be awarded in the following ways:

(1) As a tripartite agreement in which the procuring activity, SBA and the Participant all sign the appropriate contract documents. There may be separate prime and subcontract documents (i.e., a prime contract between the procuring activity and SBA and a subcontract between SBA and the selected 8(a) concern) or a combined contract document representing both the prime and subcontract relationships; or

(2) Where SBA has delegated contract execution authority to the procuring activity, directly by the procuring activity through a contract between the procuring activity and the Participant.

(b) Where SBA receives a contract for signature valued at or below the simplified acquisition threshold, it will sign the contract and return it to the procuring activity within three (3) days of receipt.

(c) In order to be eligible to receive a sole source 8(a) contract, a firm must be a current Participant on the date of award. (*See* § 124.507(d) for competitive 8(a) awards.)

**§ 124.509 What are non-8(a) business activity targets?**

(a) *General.* (1) To ensure that Participants do not develop an unreasonable reliance on 8(a) awards, and to ease their transition into the competitive marketplace after graduating from the 8(a) BD program, Participants must make maximum efforts to obtain business outside the 8(a) BD program.

(2) During both the developmental and transitional stages of the 8(a) BD program, a Participant must make substantial and sustained efforts, including following a reasonable marketing strategy, to attain the targeted dollar levels of non-8(a) revenue established in its business plan. It must attempt to use the 8(a) BD program as a resource to strengthen the firm for economic viability when program benefits are no longer available.

(b) *Required non-8(a) business activity targets during transitional stage.* (1) *General.* During the transitional stage of the 8(a) BD program, a Participant must achieve certain targets of non-8(a) contract revenue (i.e., revenue from other than sole source or competitive 8(a) contracts). These targets are called non-8(a) business activity targets and are expressed as a percentage of total revenue. The targets call for an increase in non-8(a) revenue over time.

(2) *Non-8(a) business activity targets.* During their transitional stage of program participation, Participants must meet the following non-8(a) business activity targets each year:

| Participant's year in the transitional stage | Non-8(a) business activity targets (required minimum non-8(a) revenue as a percentage of total revenue) |
|---|---|
| 1 | 15 |
| 2 | 25 |
| 3 | 35 |
| 4 | 45 |
| 5 | 55 |

(3) *Compliance with non-8(a) business activity targets.* SBA will measure the Participant's compliance with the applicable non-8(a) business activity target at the end of each program year in the transitional stage based on the Participant's latest fiscal year-end total revenue. Thus, at the end of the first year in the transitional stage of program participation, SBA will compare the Participant's non-8(a) revenue to its total revenue during that first year. If appropriate, SBA will require remedial measures during the subsequent program year. Thus, for example, non-compliance with the required non-8(a) business activity target in year one of the transitional stage would cause SBA to initiate remedial measures under paragraph (d) of this section for year two in the transitional stage.

(4) *Certification of compliance.* A Participant must certify as part of its offer that it complies with the applicable non-8(a) business activity target or with the measures imposed by SBA under paragraph (d) of this section before it can receive any 8(a) contract during the transitional stage of the 8(a) BD program.

(c) *Reporting and verification of business activity.* (1) Once admitted to the 8(a) BD program, a Participant must provide to SBA as part of its annual review:

(i) Annual financial statements with a breakdown of 8(a) and non-8(a) revenue in accord with § 124.602; and

(ii) An annual report within 30 days from the end of the program year of all non-8(a) contracts, options, and modifications affecting price executed during the program year.

(2) At the end of each year of participation in the transitional stage, the BOS assigned to work with the Participant will review the Participant's total revenues to determine whether the non-8(a) revenues have met the applicable target. In determining compliance, SBA will compare all 8(a) revenues received during the year, including those from options and modifications, to all non-8(a) revenues received during the year.

(d) *Consequences of not meeting competitive business mix targets.* (1) Except as set forth in paragraph (e) of this section, beginning at the end of the first year in the transitional stage (the fifth year of participation in the 8(a) BD program), any firm that does not meet its applicable competitive business mix target for the just completed program year will be ineligible for sole source 8(a) contracts in the current program year, unless and until the Participant corrects the situation as described in paragraph (d)(2) of this section.

(2) If SBA determines that an 8(a) Participant has failed to meet its applicable competitive business mix target during any program year in the transitional stage of program participation, SBA may increase its monitoring of the Participant's contracting activity during the ensuing program year. SBA will also notify the Participant in writing that the Participant will not be eligible for further 8(a) sole source contract awards until it has demonstrated to SBA that it has complied with its non-8(a) business activity requirements as described in paragraphs (d)(2)(i) and (d)(2)(ii) of this section. In order for a Participant to come into compliance with the non-8(a) business activity target and be eligible for further 8(a) sole source contracts, it may:

(i) Wait until the end of the current program year and demonstrate to SBA as part of the normal annual review process that it has met the revised non-8(a) business activity target; or

(ii) At its option, submit information regarding its non-8(a) revenue to SBA quarterly throughout the current program year in an attempt to come into compliance before the end of the current program year. If the Participant satisfies the requirements of paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section, SBA will reinstate the Participant's ability to get sole source 8(a) contracts prior to its annual review.

(A) To qualify for reinstatement during the first six months of the current program year (i.e., at either the first or second quarterly review), the Participant must demonstrate that it has received non-8(a) revenue and new non-8(a) contract awards that are equal to or greater than the dollar amount by which it failed to meet its non-8(a) business activity target for the just completed program year. For this purpose, SBA will not count options on existing non-8(a) contracts in determining whether a Participant has received new non-8(a) contract awards.

(B) To qualify for reinstatement during the last six months of the current program year (i.e., at either the nine-month or one year review), the Participant must demonstrate that it has achieved its non-8(a) business activity target as of that point in the current program year.

**Example 1 to paragraph (d)(2).** Firm A had $10 million in total revenue during year 2 in the transitional stage (year 6 in the program), but failed to meet the minimum non-8(a) business activity target of 25 percent. It had 8(a) revenues of $8.5 million and non-8(a) revenues of $1.5 million (15 percent). Based on total revenues of $10 million, Firm A should have had at least $2.5 million in non-8(a) revenues. Thus, Firm A missed its target by $1 million (its target ($2.5 million) minus its actual non-8(a) revenues ($1.5 million)). Because Firm A did not achieve its non-8(a) business activity target, it cannot receive 8(a) sole source awards until correcting that situation. The firm may wait until the next annual review to establish that it has met the revised target, or it can choose to report contract awards and other non-8(a) revenue to SBA quarterly. Firm A elects to submit information to SBA quarterly in year 3 of the transitional stage (year 7 in the program). In order to be eligible for sole source 8(a) contracts after either its 3 month or 6 month review, Firm A must show that it has received non-8(a) revenue and/or been awarded new non-8(a) contracts totaling $1 million (the amount by which it missed its target in year 2 of the transitional stage).

**Example 2 to paragraph (d)(2).** Firm B had $10 million in total revenue during year 2 in the transitional stage (year 6 in the program), of which $8.5 million were 8(a) revenues and $1.5 million were non-8(a) revenues. At its first two quarterly reviews during year 3 of the transitional stage (year 7 in the program), Firm B could not demonstrate that it had received at least $1 million in non-8(a) revenue and new non-8(a) awards. In order to be eligible for sole source 8(a) contracts after its 9 month or 1 year review, Firm B must show that at least 35% (the non-8(a) business activity target for year 3 in the transitional stage) of all revenues received during year 3 in the transitional stage as of that point are from non-8(a) sources.

(3) In determining whether a Participant has achieved its required non-8(a) business activity target at the end of any program year in the transitional stage, or whether a Participant that failed to meet the target for the previous program year has achieved the required level of non-8(a) business at its nine-month review, SBA will measure 8(a) support by adding the base year value of all 8(a) contracts awarded during the applicable program year to the value of all options and modifications executed during that year.

(4) As a condition of eligibility for new 8(a) contracts, SBA may also impose other requirements on a Participant that fails to achieve the non-8(a) business activity targets. These include requiring the Participant to obtain management assistance, technical assistance, and/or counseling, and/or attend seminars relating to management assistance, business development, financing, marketing, accounting, or proposal preparation.

(5) SBA may initiate proceedings to terminate a Participant from the 8(a) BD program where the firm makes no good faith efforts to obtain non-8(a) revenues.

(e) *Waiver of sole source prohibition.* (1) The AA/8(a)BD, or his or her designee, may waive the requirement prohibiting a Participant from receiving further sole source 8(a) contracts when a Participant does not meet its non-8(a) business activity target where a denial of a sole source contract would cause severe economic hardship on the Participant so that the Participant's survival may be jeopardized, or where extenuating circumstances beyond the Participant's control caused the Participant not to meet its non-8(a) business activity target. The decision to grant or deny a request for a waiver is at SBA's discretion, and no appeal may be taken with respect to that decision.

(2) The SBA Administrator on a non-delegable basis may waive the requirement prohibiting a Participant from receiving further sole source 8(a) contracts when the Participant does not meet its non-8(a) business activity target where the head of a procuring activity represents to the SBA Administrator that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.

### § 124.510 What percentage of work must a Participant perform on an 8(a) contract?

(a) To assist the business development of Participants in the 8(a) BD program, an 8(a) contractor must perform certain percentages of work with its own employees. These percentages and the requirements relating to them are the same as those established for small business set-aside prime contractors, and are set forth in § 125.6 of this title.

(b) A Participant must certify in its offer that it will meet the applicable percentage of work requirement. SBA will determine whether the firm will be in compliance as of the date of award of the contract for both sealed bid and negotiated procurements.

(c) *Indefinite quantity contracts.* (1) In order to ensure that the required percentage of costs on an indefinite quantity 8(a) award is performed by the Participant, the Participant must demonstrate semiannually that it has performed the required percentage to that date. For a service or supply contract, this does not mean that the Participant must perform 50 percent of the applicable costs for each task order with its own force, or that a Participant must have performed 50 percent of the applicable costs at any point in time during the contract's life. Rather, the Participant must perform 50 percent of the applicable costs for the combined total of all task orders issued to date at six month intervals.

**Example to paragraph (c)(1).** Two task orders are issued under an 8(a) indefinite quantity service contract during the first six months of the contract. If $100,000 in personnel costs are incurred on the first task order, 90% of those costs ($90,000) are incurred for performance by the Participant's

own work force, and the second task order also requires $100,000 in personnel costs, the Participant would have to perform only 10 percent of the personnel costs on the second task order because it would still have performed 50% of the total personnel costs at the end of the six-month period ($100,000 out of $200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on task orders issued during the first six months of the contract. In such a case, however, the percentage of work that a Participant may further contract to other concerns during the first six months of the contract may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (c)(1) of this section applies.

**Example to paragraph (c)(2).** Where a contract guarantees a minimum of $100,000 in professional services and the first task order is for $60,000 in such services, the Participant may perform as little as $10,000 of the personnel costs for that order. In such a case, however, the Participant must perform all of the next task order(s) up to $40,000 to ensure that it performs 50% of the $100,000 guaranteed minimum ($10,000 + $40,000 = $50,000 or 50% of the $100,000).

(3) The applicable SBA District Director may waive the provisions in paragraphs (c)(1) and (c)(2) of this section requiring a Participant to meet the applicable performance of work requirement at the end of any six-month period where he or she makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the Participant and the procuring activity that the contract will ultimately comply with the requirements of this section. Where SBA authorizes a Participant to exceed the subcontracting limitations and the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant.

### § 124.511 How is fair market price determined for an 8(a) contract?

(a) The procuring activity determines what constitutes a ''fair market price'' for an 8(a) contract.

(1) The procuring activity must derive the estimate of a current fair market price for a new requirement, or a requirement that does not have a satisfactory procurement history, from a price or cost analysis. This analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. The analysis must also consider any cost or pricing data that is timely submitted by SBA.

(2) The procuring activity must base the estimate of a current fair market price for a requirement that has a satisfactory procurement history on recent award prices adjusted to ensure comparability. Adjustments will take into account differences in quantities, performance, times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be appropriate.

(b) Upon the request of SBA, a procuring activity will provide to SBA a written statement detailing the method it has used to estimate the current fair market price for the 8(a) requirement. This statement must be submitted within 10 working days of SBA's request. The procuring activity must identify the information, studies, analyses, and other data it used in making its estimate.

(c) The procuring activity's estimate of fair market price and any supporting data may not be disclosed by SBA to any Participant or potential contractor.

(d) The concern selected to perform an 8(a) contract may request SBA to protest the procuring activity's estimate of current fair market price to the Secretary of the Department or head of the agency in accordance with § 124.505.

### § 124.512 Delegation of contract administration to procuring agencies.

(a) SBA may delegate, by the use of special clauses in the 8(a) contract documents or by a separate agreement with the procuring activity, all responsibilities for administering an 8(a) contract to the procuring activity except the approval of novation agreements under 48 CFR 42.302(a)(25).

(b) This delegation of contract administration authorizes a contracting officer to execute any priced option or in scope modification without SBA's concurrence. The contracting officer must, however, notify SBA of all modifications and options exercised.

### § 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

(a) *General.* (1) If approved by SBA, a Participant may enter into a joint venture agreement with one or more other small business concerns, whether or not 8(a) Participants, for the purpose of performing a specific 8(a) contract.

(2) A joint venture agreement is permissible only where an 8(a) concern lacks the necessary capacity to perform the contract on its own, and the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern. However, where SBA concludes that an 8(a) concern brings very little to the joint venture relationship in terms of resources and expertise other than its 8(a) status, SBA will not approve the joint venture arrangement.

(b) *Size of concerns to an 8(a) joint venture.* (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(i) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC code assigned to the contract; and

(ii)(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds $10 million;

(2) For sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b)(1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code assigned to the 8(a) contract.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, a joint venture between a protege firm and its approved mentor (*see* § 124.520) will be deemed small provided the protege qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and has not reached the dollar limit set forth in § 124.519.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform an 8(a) contract, including those between mentors and proteges authorized by § 124.520, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating an 8(a) Participant as the managing venturer of the joint venture, and an employee of the managing venturer as the project

manager responsible for performance of the 8(a) contract;

(3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the 8(a) Participant(s);

(4) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each;

(6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract;

(7) Obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;

(8) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(9) Requiring the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the joint venture;

(10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Performance of work.* For any 8(a) contract, including those between mentors and proteges authorized by § 124.520, the joint venture must perform the applicable percentage of work required by § 124.510, and the 8(a) partner(s) to the joint venture must perform a significant portion of the contract.

(e) *Prior approval by SBA.* SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture.

(f) *Contract execution.* Where SBA has approved a joint venture, the procuring activity will execute an 8(a) contract in the name of the joint venture entity.

(g) *Amendments to joint venture agreement.* All amendments to the joint venture agreement must be approved by SBA.

(h) *Inspection of records.* SBA may inspect the records of the joint venture without notice at any time deemed necessary.

**§ 124.514 Exercise of 8(a) options and modifications.**

(a) *Unpriced options.* The exercise of an unpriced option is considered to be a new contracting action.

(1) If a concern has graduated or been terminated from the 8(a) BD program or is no longer small under the size standard corresponding to the SIC code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised.

(2) If the concern is still a Participant and otherwise eligible for the requirement on a sole source basis, the procuring activity contracting officer may negotiate price and exercise the option provided the option, considered a new contracting action, meets all regulatory requirements, including the procuring activity's offering and SBA's acceptance of the requirement for the 8(a) BD program.

(3) If the estimated fair market price of the option exceeds the applicable threshold amount set forth in § 124.506, the requirement must be competed as a new contract among eligible Participants.

(b) *Priced options.* The procuring activity contracting officer may exercise a priced option to an 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.

(c) *Modifications beyond the scope.* A modification beyond the scope of the initial 8(a) contract award is considered to be a new contracting action. It will be treated the same as an unpriced option as described in paragraph (a) of this section.

(d) *Modifications within the scope.* The procuring activity contracting officer may exercise a modification within the scope of the initial 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.

**§ 124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?**

(a) An 8(a) contract must be performed by the Participant that initially received it unless a waiver is granted under paragraph (b) of this section.

(1) An 8(a) contract, whether in the base or an option year, must be terminated for the convenience of the Government if:

(i) One or more of the individuals upon whom eligibility for the 8(a) BD program was based relinquishes or enters into any agreement to relinquish ownership or control of the Participant such that the Participant would no longer be controlled or at least 51% owned by disadvantaged individuals; or

(ii) The contract is transferred or novated for any reason to another firm.

(2) The procuring activity may not assess repurchase costs or other damages against the Participant due solely to the provisions of this section.

(b) The SBA Administrator may waive the requirements of paragraph (a)(1) of this section if requested to do so by the 8(a) contractor when:

(1) It is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;

(2) Ownership and control of the concern that is performing the 8(a) contract will pass to another Participant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;

(3) Any individual upon whom eligibility was based is no longer able to exercise control of the concern due to physical or mental incapacity or death;

(4) The head of the procuring agency, or an official with delegated authority from the agency head, certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions; or

(5) It is necessary for the disadvantaged owners of the initial 8(a) awardee to relinquish ownership of a majority of the voting stock of the concern in order to raise equity capital, but only if—

(i) The concern has graduated from the 8(a) BD program;

(ii) The disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(iii) The disadvantaged owners will maintain control of the daily business operations of the concern.

(c) The 8(a) contractor must request a waiver in writing prior to the change of

ownership and control except in the case of death or incapacity. A request for waiver due to incapacity or death must be submitted within 60 days after such occurrence. The Participant seeking to change ownership or control must specify the grounds upon which it requests a waiver, and must demonstrate that the proposed transaction would meet such grounds.

(d) SBA determines the eligibility of an acquiring Participant under paragraph (b)(2) of this section by referring to the items identified in § 124.507(b)(2) and deciding whether at the time of the request for waiver (and prior to the transaction) the acquiring Participant is a responsible and eligible concern with respect to each contract for which a waiver is sought. As part of the waiver request, the acquiring firm must certify that it is a small business for the size standard corresponding to the SIC code assigned to each contract for which a waiver is sought.

(e) Anyone other than a procuring agency head who submits a certification regarding the impairment of the agency's objectives under paragraph (b)(4) of this section, must also certify delegated authority to make the certification.

(f) In processing a request for a waiver under paragraph (b)(2) of this section, SBA will treat a transfer of all a Participant's operating assets to another Participant the same as the transfer of an ownership interest, provided the Participant that transfers its assets to another eligible Participant:

(1) Voluntarily graduates from the 8(a) BD program; and

(2) Ceases its business operations, or presents a plan to SBA for its orderly dissolution.

(g) A concern performing an 8(a) contract must notify SBA in writing immediately upon entering into an agreement or agreement in principle (either oral or written) to transfer all or part of its stock or other ownership interest or assets to any other party. Such an agreement could include an oral agreement to enter into a transaction to transfer interests in the future.

(h) The Administrator has discretion to decline a request for waiver even though legal authority exists to grant the waiver.

(i) The 8(a) contractor may appeal SBA's denial of a waiver request by filing a petition with OHA pursuant to part 134 of this title within 45 days of the date of service (as defined in § 134.204) of the Administrator's decision.

**§ 124.516 Who decides contract disputes arising between a Participant and a procuring activity after the award of an 8(a) contract?**

For purposes of the Disputes Clause of a specific 8(a) contract, the contracting officer is that of the procuring activity. A dispute arising between an 8(a) contractor and the procuring activity contracting officer will be decided by the procuring activity, and appeals may be taken by the 8(a) contractor without SBA involvement.

**§ 124.517 Can the eligibility or size of a Participant for award of an 8(a) contract be questioned?**

(a) The eligibility of a Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest.

(b) The size status of the apparent successful offeror for a competitive 8(a) procurement may be protested pursuant to § 121.1001(a)(2) of this chapter. The size status of a nominated Participant for a sole source 8(a) procurement may not be protested by another Participant or any other party.

(c) A Participant cannot appeal SBA's determination not to award it a specific 8(a) contract because the concern lacks an element of responsibility or is ineligible for the contract, other than the right set forth in § 124.501(h) to request a formal size determination where SBA cannot verify it to be small.

(d)(1) The SIC code assigned to a sole source 8(a) requirement may not be challenged by another Participant or any other party either to SBA or any administrative forum as part of a bid or contract protest. Only the AA/8(a)BD may appeal a SIC code designation with respect to a sole source 8(a) requirement.

(2) In connection with a competitive 8(a) procurement, any interested party who has been adversely affected by a SIC code designation may appeal the designation to SBA's OHA pursuant to § 121.1103 of this title.

(e) Anyone with information questioning the eligibility of a Participant to continue participation in the 8(a) BD program or for purposes of a specific 8(a) contract may submit such information to SBA under § 124.112(c).

**§ 124.518 How can an 8(a) contract be terminated before performance is completed?**

(a) *Termination for default.* A decision to terminate a specific 8(a) contract for default can be made by the procuring activity contracting officer after consulting with SBA. The contracting officer must advise SBA of any intent to terminate an 8(a) contract for default in writing before doing so. SBA may provide to the Participant any program benefits reasonably available in order to assist it in avoiding termination for default. SBA will advise the contracting officer of this effort. Any procuring activity contracting officer who believes grounds for termination continue to exist may terminate the 8(a) contract for default, in accordance with the Federal Acquisition Regulations (48 CFR chapter 1). SBA will have no liability for termination costs or reprocurement costs.

(b) *Termination for convenience.* After consulting with SBA, the procuring activity contracting officer may terminate an 8(a) contract for convenience when it is in the best interests of the Government to do so. A termination for convenience is appropriate if any disadvantaged owner of the Participant performing the contract relinquishes ownership or control of such concern, or enters into any agreement to relinquish such ownership or control, unless a waiver is granted pursuant to § 124.515.

(c) *Substitution of one 8(a) contractor for another.* Where a procuring activity contracting officer demonstrates to SBA that an 8(a) contract will otherwise be terminated for default, SBA may authorize another Participant to complete performance and, in conjunction with the procuring activity, permit novation of the contract without invoking the termination for convenience or waiver provisions of § 124.515.

**§ 124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?**

(a) A Participant (other than one owned by an Indian tribe or an ANC) may not receive sole source 8(a) contract awards where it has received a combined total of competitive and sole source 8(a) contracts in excess of the dollar amount set forth in this section during its participation in the 8(a) BD program.

(1) For a firm having a revenue-based primary SIC code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is five times the size standard corresponding to that SIC code as of the date of SBA's acceptance of the requirement for the 8(a) BD program or $100,000,000, whichever is less.

(2) For a firm having an employee-based primary SIC code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is $100,000,000.

(3) SBA will not consider 8(a) contracts awarded under $100,000 in determining whether a Participant has reached the limit identified in paragraphs (a)(1) and (a)(2) of this section.

(b) Once the limit is reached, a firm may not receive any more 8(a) sole source contracts, but may remain eligible for competitive 8(a) awards.

(c) The limitation set forth in paragraph (a) of this section will not apply for firms that are current Participants in the 8(a) BD program as of December 31, 1997.

(d) SBA includes the dollar value of 8(a) options and modifications in determining whether a Participant has reached the limit identified in paragraph (a) of this section. If an option is not exercised or the contract value is reduced by modification, SBA will deduct those values.

(e) A Participant's eligibility for a sole source award in terms of whether it has exceeded the dollar limit for 8(a) contracts is measured as of the date that the requirement is accepted for the 8(a) program without taking into account whether the value of that award will cause the limit to be exceeded.

(f) The SBA Administrator on a non-delegable basis may waive the requirement prohibiting a Participant from receiving sole source 8(a) contracts in excess of the dollar amount set forth in this section where the head of a procuring activity represents to the SBA Administrator that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.

**§ 124.520 Mentor/protege program.**

(a) *General.* The mentor/protege program is designed to encourage approved mentors to provide various forms of assistance to eligible Participants. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government in the form of joint venture arrangements. The purpose of the mentor/protege relationship is to enhance the capabilities of the protege and to improve its ability to successfully compete for contracts.

(b) *Mentors.* Any concern that demonstrates a commitment and the ability to assist developing 8(a) Participants may act as a mentor and receive benefits as set forth in this section. This includes businesses that have graduated from the 8(a) BD program, firms that are in the transitional stage of program participation, other small businesses, and large businesses.

(1) In order to qualify as a mentor, a concern must demonstrate that it:

(i) Possesses favorable financial health, including profitability for at least the last two years;

(ii) Possesses good character;

(iii) Does not appear on the federal list of debarred or suspended contractors; and

(iv) Can impart value to a protege firm due to lessons learned and practical experience gained because of the 8(a) BD program, or through its general knowledge of government contracting.

(2) Generally, a mentor will have no more than one protege at a time. However, the AA/8(a)BD may authorize a concern to mentor more than one protege at a time where the concern can demonstrate that the additional mentor/protege relationship will not adversely affect the development of either protege firm (e.g., the second firm cannot be a competitor of the first firm).

(3) In order to demonstrate its favorable financial health, a firm seeking to be a mentor must submit its federal tax returns for the last two years to SBA for review.

(4) Once approved, a mentor must annually certify that it continues to possess good character and a favorable financial position.

(c) *Proteges.* (1) In order to initially qualify as a protege firm, a Participant must:

(i) Be in the developmental stage of program participation;

(ii) Have never received an 8(a) contract; or

(ii) Have a size that is less than half the size standard corresponding to its primary SIC code.

(2) Only firms that are in good standing in the 8(a) BD program (e.g., firms that do not have termination or suspension proceedings against them, and are up to date with all reporting requirements) may qualify as a protege.

(3) A protege firm may have only one mentor at a time.

(d) *Benefits.* (1) A mentor and protege may joint venture as a small business for any government procurement, including procurements less than half the size standard corresponding to the assigned SIC code and 8(a) sole source contracts, provided both the mentor and the protege qualify as small for the procurement and, for purposes of 8(a) sole source requirements, the protege has not reached the dollar limit set forth in § 124.519.

(2) Notwithstanding the requirements set forth in §§ 124.105(g) and (h), in order to raise capital for the protege firm, the mentor may own an equity interest of up to 40% in the protege firm.

(3) Notwithstanding the mentor/protege relationship, a protege firm may qualify for other assistance as a small business, including SBA financial assistance.

(4) No determination of affiliation or control may be found between a protege firm and its mentor based on the mentor/protege agreement or any assistance provided pursuant to the agreement.

(e) *Written agreement.* (1) The mentor and protege firms must enter a written agreement setting forth an assessment of the protege's needs and describing the assistance the mentor commits to provide to address those needs (e.g., management and/or technical assistance, loans and/or equity investments, cooperation on joint venture projects, or subcontracts under prime contracts being performed by the mentor). The agreement must also provide that the mentor will provide such assistance to the protege firm for at least one year.

(2) The written agreement must be approved by the AA/8(a)BD. The agreement will not be approved if SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains to the protege, or if SBA determines that the agreement is merely a vehicle to enable a non-8(a) participant to receive 8(a) contracts.

(3) The agreement must provide that either the protege or the mentor may terminate the agreement with 30 days advance notice to the other party to the mentor/protege relationship and to SBA.

(4) SBA will review the mentor/protege relationship annually to determine whether to approve its continuation for another year.

(5) SBA must approve all changes to a mentor/protege agreement in advance.

(f) *Evaluating the mentor/protege relationship.* (1) In its annual business plan update required by § 124.403(a,) the protege must report to SBA for the protege's preceding program year:

(i) All technical and/or management assistance provided by the mentor to the protege;

(ii) All loans to and/or equity investments made by the mentor in the protege;

(iii) All subcontracts awarded to the protege by the mentor, and the value of each subcontract;

(iv) All federal contracts awarded to the mentor/protege relationship as a joint venture (designating each as an 8(a), small business set aside, or unrestricted procurement), the value of each contract, and the percentage of the

contract performed and the percentage of revenue accruing to each party to the joint venture; and

(v) A narrative describing the success such assistance has had in addressing the developmental needs of the protege and addressing any problems encountered.

(2) The protege must annually certify to SBA whether there has been any change in the terms of the agreement.

(3) SBA will review the protege's report on the mentor/protege relationship as part of its annual review of the firm's business plan pursuant to § 124.403. SBA may decide not to approve continuation of the agreement if it finds that the mentor has not provided the assistance set forth in the mentor/protege agreement or that the assistance has not resulted in any material benefits or developmental gains to the protege.

## Miscellaneous Reporting Requirements

### § 124.601 What reports does SBA require concerning parties who assist Participants in obtaining federal contracts?

(a) Each Participant must submit annually a written report to its assigned BOS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation.

(b) Failure to submit the report is good cause for the initiation of a termination proceeding pursuant to §§ 124.303 and 124.304.

### § 124.602 What kind of annual financial statement must a Participant submit to SBA?

(a) Participants with gross annual receipts of more than $5,000,000 must submit to SBA audited annual financial statements prepared by a licensed independent public accountant within 120 days after the close of the concern's fiscal year.

(1) The servicing SBA District Director may waive the requirement for audited financial statements for good cause shown by the Participant.

(2) Circumstances where waivers of audited financial statements may be granted include, but are not limited to, the following:

(i) The concern has an unexpected increase in sales towards the end of its fiscal year that creates an unforeseen requirement for audited statements;

(ii) The concern unexpectedly experiences severe financial difficulties which would make the cost of audited financial statements a particular burden; and

(iii) The concern has been a Participant less than 12 months.

(b) Participants with gross annual receipts between $1,000,000 and $5,000,000 must submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant within 90 days after the close of the concern's fiscal year.

(c) Participants with gross annual receipts of less than $1,000,000 must submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant, verified as to accuracy by an authorized officer, partner, limited liability member, or sole proprietor of the Participant, including signature and date, within 90 days after the close of the concern's fiscal year.

(d) Any audited or reviewed financial statements submitted to SBA pursuant to paragraphs (a) or (b) of this section must be prepared in accordance with Generally Accepted Accounting Principles.

(e) While financial statements need not be submitted until 90 or 120 days after the close of a Participant's fiscal year, depending on the receipts of the concern, a Participant seeking to be awarded an 8(a) contract between the close of its fiscal year and such 90 or 120-day time period must submit a final sales report signed by the CEO or President to SBA in order for SBA to determine the concern's eligibility for the 8(a) contract. This report must show a breakdown of 8(a) and non-8(a) sales.

(f) Notwithstanding the amount of a Participant's gross annual receipts, SBA may require audited or reviewed statements whenever they are needed to obtain more complete information as to a concern's assets, liabilities, income or expenses, such as when the concern's capacity to perform a specific 8(a) contract must be determined, or when they are needed to determine continued program eligibility.

### § 124.603 What reports regarding the continued business operations of former Participants does SBA require?

Former Participants must provide such information as SBA may request concerning the former Participant's continued business operations, contracts, and financial condition for a period of three years following the date on which the concern graduates or is terminated from the program. Failure to provide such information when requested will constitute a violation of the regulations set forth in this part, and may result in the nonexercise of options on or termination of contracts awarded through the 8(a) BD program, debarment, or other legal recourse.

## Management and Technical Assistance Program

### § 124.701 What is the purpose of the 7(j) management and technical assistance program?

Section 7(j)(1) of the Small Business Act, 15 U.S.C. 636(j)(1), authorizes SBA to enter into grants, cooperative agreements, or contracts with public or private organizations to pay all or part of the cost of technical or management assistance for individuals or concerns eligible for assistance under sections 7(a)(11), 7(j)(10), or 8(a) of the Small Business Act.

### § 124.702 What types of assistance are available through the 7(j) program?

Through its private sector service providers, SBA may provide a wide variety of management and technical assistance to eligible individuals or concerns to meet their specific needs, including:

(a) Counseling and training in the areas of financing, management, accounting, bookkeeping, marketing, and operation of small business concerns; and

(b) The identification and development of new business opportunities.

### § 124.703 Who is eligible to receive 7(j) assistance?

The following businesses are eligible to receive assistance from SBA through its service providers:

(a) Businesses which qualify as small under part 121 of this title, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(b) Businesses eligible to receive 8(a) contracts.

### § 124.704 What additional management and technical assistance is reserved exclusively for concerns eligible to receive 8(a) contracts?

In addition to the management and technical assistance available under § 124.702, Section 7(j)(10) of the Small Business Act authorizes SBA to provide additional management and technical assistance through its service providers exclusively to small business concerns eligible to receive 8(a) contracts, including:

(a) Assistance to develop comprehensive business plans with

specific business targets, objectives, and goals;

(b) Other nonfinancial services necessary for a Participant's growth and development, including loan packaging; and

(c) Assistance in obtaining equity and debt financing.

## PART 134—[AMENDED]

7. The authority citation for 13 CFR part 134 continues to read as follows:

**Authority:** 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6) and 637(a).

7a. Section 134.201 is amended by revising the second and third sentences to read as follows:

### § 134.201 Scope of the rules in this subpart B.

* * * Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act are set forth, respectively in subpart D of this part and part 142 of this chapter. In the case of a conflict between a particular rule in this subpart and a rule of procedure pertaining to OHA appearing in another subpart of this part or another part of this chapter, the latter rule shall govern.

8. Section 134.202 is amended in paragraph (c) by removing the reference to ''subpart D of this part'' and inserting in its place the phrase ''subpart E of this part,'' and in paragraph (d) by removing the phrase ''§ 124.211'' and inserting in its place the phrase ''§ 134.305.''

9. Section 134.203 is amended by redesignating paragraphs (a)(2) through (4) as paragraphs (a)(3) through (5) and adding the following new paragraph (a)(2):

### § 134.203 The petition.

(a) * * *

(2) The SBA determination being appealed.

* * * * *

10. Section 134.211 is amended by adding the following new paragraph (d):

### § 134.211 Motions.

* * * * *

(d) *Stay.* A motion to dismiss stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion to dismiss.

### § 134.213 [Amended]

11. Section 134.213(a) is amended by removing the second sentence.

### § 134.222 [Amended]

12. Section 134.222 is amended by removing the ';'' and the word ''or'' at the end of paragraph (a)(2), by inserting a ''.'' at the end of paragraph (a)(2), and by removing paragraph (a)(3).

13. Subpart D is redesignated as Subpart E, §§ 134.401 through 134.418 are redesignated as §§ 134.501 through 134.518, and the following new Subpart D is added:

**Subpart D—Rules of Practice for Appeals Under the 8(a) Program**

134.401 Scope of the rules in this subpart D.
134.402 Appeal petition.
134.403 Service of appeal petition.
134.404 Decision by Administrative Law Judge.
134.405 Jurisdiction.
134.406 Review of administrative record.
134.407 Evidence beyond the record and discovery.
134.408 Decision on appeal.

## Subpart D—Rules of Practice for Appeals Under the 8(a) Program

### § 134.401 Scope of the rules in this subpart D.

The rules of practice in this subpart D apply to all appeals to OHA from:

(a) Denials of 8(a) BD program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206 of this title;

(b) Early graduation pursuant to §§ 124.302 and 124.304;

(c) Termination pursuant to §§ 124.303 and 124.304;

(d) Denials of requests to issue a waiver pursuant to § 124.515; and

(e) Suspensions pursuant to § 124.305(a).

### § 134.402 Appeal petition.

In addition to the requirements of § 134.203, an appeal petition must state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law.

### § 134.403 Service of appeal petition.

(a) Concurrent with its filing with OHA, a concern must also serve SBA's AA/8(a)BD and the appropriate Associate General Counsel in SBA's Office of General Counsel with a copy of the petition, including attachments.

(1) For appeals relating to denials of program admission pursuant to § 124.206 of this title, suspensions of program assistance pursuant to § 124.305, or denials of requests for waivers pursuant to § 124.515, a petitioner must serve the SBA's Associate General Counsel for General Law.

(2) For appeals relating to early graduation pursuant to §§ 124.302 and 124.304 or termination pursuant to §§ 124.303 and 124.304, a petitioner must serve the SBA's Associate General Counsel for Litigation.

(3) Service on SBA's Office of General Counsel generally or the SBA General Counsel do not meet the service requirements of this section.

(b) Service should be addressed to the AA/8(a)BD and the applicable Associate General Counsel at the Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

### § 134.404 Decision by Administrative Law Judge.

Appeal proceedings brought under this subpart will be conducted by an Administrative Law Judge.

### § 134.405 Jurisdiction.

(a) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed under § 134.202 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in subparts A and B of this part; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

(c) Jurisdiction of the Administrative Law Judge in a suspension case is limited to the issue of whether the protection of the Government's interest requires suspension pending resolution of the termination action, unless the Administrative Law Judge has consolidated the suspension appeal with the corresponding termination appeal.

### § 134.406 Review of the administrative record.

(a) Except as provided in § 134.407, any proceeding conducted under this subpart shall be decided solely on a review of the written administrative record.

(b) The Administrative Law Judge's review is limited to determining

whether the Agency's determination is arbitrary, capricious, or contrary to law. As long as the Agency's determination is reasonable, the Administrative Law Judge must uphold it on appeal.

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker relied. The administrative record, however, need not contain all documents pertaining to the petitioner. For example, the administrative record in a termination proceeding need not include the Participant's entire business plan file, documents pertaining to specific 8(a) contracts, or the firm's application for participation in the 8(a) BD program if they are unrelated to the termination action. The petitioner may object to the absence of a document, previously submitted to or sent by SBA, which the petitioner believes was erroneously omitted from the administrative record.

(d) Where the Agency files its answer to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the answer and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious or contrary to law, or where it is clearly apparent from the record that SBA made an erroneous factual finding (e.g., SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (e.g., SBA applied the wrong regulatory provision in evaluating the case). Such a remand will be for a period of 10 working days.

**§ 134.407 Evidence beyond the record and discovery.**

(a) The Administrative Law Judge may not admit evidence beyond the written administrative record nor permit any form of discovery unless he or she first determines that the petitioner, upon written submission, has made a substantial showing, based on credible evidence and not mere allegation, that the Agency determination in question may have resulted from bad faith or improper behavior.

(1) Prior to any such determination, the Administrative Law Judge must permit SBA to respond in writing to any allegations of bad faith or improper behavior.

(2) Upon a determination by the Administrative Law Judge that the petitioner has made such a substantial showing, the Administrative Law Judge may permit appropriate discovery, and accept relevant evidence beyond the written administrative record, which is specifically limited to the alleged bad faith or improper behavior.

(b) A determination by the Administrative Law Judge that the required showing set forth in paragraph (a) of this section has been made does not shift the burden of proof, which continues to rest with the petitioner.

**§ 134.408 Decision on appeal.**

(a) A decision of the Administrative Law Judge under this subpart is the final agency decision, and is binding on the parties.

(b) The Administrative Law Judge shall issue a decision, insofar as practicable, within 90 days after an appeal petition is filed. If the Administrative Law Judge does not issue a decision within 90 days after an appeal petition is filed, he or she must indicate the reason that the 90-day time limit has not been met in the decision, when issued.

(c) The Administrative Law Judge may reconsider an appeal decision within 20 days of the decision if there is a clear showing of an error of fact or law material to the decision.

Dated: February 13, 1998.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98–17196 Filed 6–26–98; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 124

## 8(a) Business Development/Small Disadvantaged Business Status Determinations

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** In response to the Department of Justice's review of Federal procurement affirmative action programs and amendments to the Federal Acquisition Regulation to implement a government-wide small disadvantaged business (SDB) program, the Small Business Administration (SBA) issues this final rule establishing the procedural framework for certifying firms as SDBs and for processing protests challenging the disadvantaged status of a firm claiming to be an SDB.

**DATES:** *Effectove Dates.* The amendments made by this rule to subpart A of 13 CFR part 124 are effective on June 30, 1998. Sections 124.1001 through 124.1016 of subpart B of 13 CFR part 124 are effective on August 24, 1998. With the exeptions of §§ 124.1017(b) and 124.1020(c)(2), §§ 124.1017 through 124.1024 of subpart B of 13 CFR part 124 are effective on October 1, 1998. Sections 124.1017(b) and 124.1020(c)(2) of subpart B of 13 CFR part 124 are effective on January 1, 1999.

*Compliance Dates.* SBA will begin to accept and process applications for SDB certifications as of August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Calvin Jenkins, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, at (202) 205–6459.

**SUPPLEMENTARY INFORMATION:** On May 9, 1997, the Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) proposed amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business concerns. 62 FR 25786. The amendments were intended to conform to a Department of Justice (DOJ) proposal to reform affirmative action in Federal procurement (*see* 61 FR 26042) and to comply with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. Pena, 115 S.Ct. 2097 (1995). The proposed amendments to the FAR included procedures by which a firm claiming to be owned and controlled by one or more disadvantaged individuals could certify its status as a small disadvantaged business (SDB) concern for purposes of receiving a benefit as an SDB in connection with a Federal procurement. The proposed FAR change also contained procedures by which an interested party may protest a small business concern's disadvantaged status to the Small Business Administration (SBA). In response to and in conjunction with the DOJ and FAR reform proposals, on August 14, 1997, SBA published in the **Federal Register**, 62 FR 43584, a proposed rule to amend 13 CFR part 124. Subpart A of the proposed part 124 dealt with changes pertaining to the 8(a) Business Development (8(a) BD) program which is authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a). Subpart B of proposed

part 124 dealt with SBA's role in the certification and protest of small disadvantaged businesses, as contemplated by the DOJ and FAR proposals. SBA is finalizing the vast majority of subpart A of 13 CFR part 124 as a separate rulemaking action. This rule finalizes subpart B of 13 CFR part 124, discussing fully all substantive comments received regarding subpart B in response to the August 14, 1997 proposed rule. This rule also makes four changes to subpart A of 13 CFR part 124 in order to take into account the effect that benchmark achievement, explained below, may have on the 8(a) BD program.

As recommended in the DOJ review of Federal affirmative action procurement programs, subpart B of part 124 as set forth in this rule describes standards and procedures by which a firm can apply to be recognized as a small disadvantaged business (SDB). Under the rule, SBA, or, where SBA deems it appropriate, SBA-approved state agencies, private sector organizations or business concerns (called Private Certifiers), will determine whether a firm is owned and controlled by specified individuals claiming to be disadvantaged. Where a Private Certifier determines ownership and control, the Private Certifier will issue a written decision as to whether the applicant is actually owned and controlled by the individuals identified as claiming disadvantaged status, and will forward the application along with a copy of its decision to SBA for further processing as to the other aspects of SDB eligibility. Where the Private Certifier finds that the applicant is not owned and controlled by the individuals claiming disadvantaged status, its decision will state the specific reasons for the finding, and inform the applicant of its right to appeal the decision to SBA's Office of Hearings and Appeals (OHA). Where SBA determines ownership and control, SBA will first determine whether the applicant is owned and controlled by the individual(s) claiming to be disadvantaged. If SBA determines that the applicant is not owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a written decision addressing only the ownership and control issues. If SBA determines that the applicant is owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a single written decision as to whether the applicant qualifies as an SDB. Such a decision will include the ownership and control of the firm, the size status of the firm, and the disadvantaged status of those individuals claiming to be disadvantaged. An applicant may appeal SBA's determination that it is not owned and controlled by those individuals claiming disadvantaged status, or its decision that one or more of the individuals claiming disadvantaged status are not actually disadvantaged to OHA. An applicant may also request a formal size determination with the applicable SBA Government Contracting Area Office.

Individuals who are members of certain designated groups are presumed to be socially and economically disadvantaged. SBA will consider evidence presented to it which is contrary to the presumptions, and may seek further information from the applicant individuals. Other individuals must submit a narrative statement identifying personally how their entry into or advancement in the business world has been impaired because of their individual social disadvantage, and how their ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities. These procedures are completely separate from the 8(a) BD requirements. The rule describes procedures for listing and removing firms from an SBA-maintained on-line register of certified SDBs. With respect to the 8(a) BD program, the rule also provides regulatory authority for SBA, in its discretion, to limit program entry, accelerate program graduation, and limit the numbers of 8(a) contracts available when the benchmarks referred to in the FAR are achieved in particular industries.

SBA has attempted to write the regulations in plain English.

**Discussion of Public Comment**

SBA received several comments concerning the application of benchmarks to the 8(a) BD program. Some comments questioned the methodology of establishing benchmarks. Neither the proposed rule nor this final rule addresses the way in which benchmarks will be developed. As such, those comments are not relevant to this rulemaking, and SBA makes no changes in response to them. A few comments expressed concern about the actions SBA may take when the benchmark is exceeded in a particular industry (i.e., SBA may decide not to accept an application for the 8(a) BD program from a concern in that industry (§ 124.108(f)); SBA may accelerate graduation of Participants (§ 124.302(d)); or SBA may elect not to accept a requirement as an 8(a) contract (§ 124.504(d)). While the regulations give SBA discretion to take any of those actions in appropriate circumstances, they do not mandate that such actions be taken in any case. In considering whether to take action under these provisions, the SBA Administrator will weigh the business development purposes of the program in every case.

*Part 124, subpart B:* Subpart B of the August 14, 1997 proposed rule defined what an SDB is and set forth the procedures by which a firm can be recognized as an SDB. Each of the significant comments received regarding subpart B and the changes made to subpart B are identified below.

Proposed § 124.1001 defined an SDB as a business which is owned and controlled by one or more disadvantaged individuals. One commenter noted that this omitted references to certain entities which are considered disadvantaged. SBA agrees with this comment, and this final rule changes § 124.1001 to make clear that firms owned and controlled by the following entities, i.e., Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes (tribes) or Native Hawaiian Organizations (NHOs), are considered disadvantaged.

Proposed § 124.1002(d) would have required SBA to consider the ''character'' of each individual claiming disadvantaged status in determining whether a firm qualified as an SDB. Upon further reflection, SBA does not believe that SBA should look at the character of the firm or individuals claiming disadvantaged status as part of its SDB determination. The requirement that a firm and its principals possess ''good character'' should be a responsibility issue to be determined by the contracting officer in connection with each contract for which the firm is the apparent successful offeror, and should have no bearing on whether a firm should be classified as an SDB. As such, SBA has deleted that requirement from this final rule.

Proposed § 124.1002(b)(4) listed as a requirement for SDB status (relating to DOD, NASA and Coast Guard procurements) the additional requirement that a majority of the SDB's earnings accrue directly to the disadvantaged individuals. One commenter questioned why this restriction applied only to DOD, NASA and the Coast Guard. The reason for the limited applicability is that the restriction appears in the authorizing legislation for the SDB program applying to DOD, NASA and Coast Guard (*see* section 1207 of the Defense Acquisition Improvement Act of 1986, Public Law 99–661), but not in the authorizing legislation for the

Government-wide SDB program (*see* section 7102 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355). This rule is consistent with this statutory distinction.

Proposed § 124.1002(f)(4) required that a majority of a joint venture's earnings must accrue directly to disadvantaged individuals and entities. One commenter noted that this provision could be read to impose an additional requirement on ANCs that would be contrary to 43 U.S.C. 1626(e). SBA does not believe this to be true because the provision was meant to apply to SDBs owned by disadvantaged individuals and not to those owned by tribes, ANCs, CDCs or NHOs. Nevertheless, SBA has deleted this provision from the final rule because it is contract specific and should not affect whether a firm should be considered an SDB generally.

The final rule deletes proposed § 124.1002(g), the requirement that an SDB must perform certain specified percentages of work with its own employees. Upon further deliberation, SBA believes that this requirement is a contract specific requirement and does not belong in the regulations defining what an SDB is. SBA has added a new paragraph (g) clarifying that the ownership restrictions contained in §§ 124.105(g) and (h) do not apply to SDB eligibility. Those restrictions apply to the 8(a) BD program because it is a business development program.

Proposed §§ 124.1003 through 124.1009 set forth various requirements relating to Private Certifiers. The proposed rule stated that Private Certifiers would perform determinations of ownership and control and that SBA would perform such determinations where ''a Private Certifier is not reasonably available.'' SBA received several comments on the proposed use of Private Certifiers. One commenter stated that the use of Private Certifiers provided a quick and cost effective certification process. Several commenters were concerned about the required qualifications, if any, of the Private Certifiers, the procedures to be used by them in the certification process, and the monitoring of the Private Certifiers. One commenter strongly disagreed with the use of Private Certifiers to determine ownership and control in any case, and believed that SBA was better suited for this responsibility.

Upon further deliberation, SBA does not believe it is prudent to limit its ability to perform ownership and control determinations only to situations where Private Certifiers are not available. The final rule still authorizes SBA to approve Private Certifiers and for Private Certifiers to perform ownership and control determinations in appropriate circumstances. However, it will be within SBA's discretion as to when and to what extent Private Certifiers will be utilized in the SDB certification process. A firm seeking to be certified as an SDB should contact its local SBA field office to learn whether to submit its SDB application to SBA or to a Private Certifier. SBA's Homepage on the Internet will also identify this information.

In addition, in response to concerns about SBA's monitoring Private Certifiers, the final rule (§ 124.1003) provides that SBA will establish standards regarding qualifications, monitoring, procedures and use, if any, of Private Certifiers. SBA will establish these standards in the document approving an organization or concern as a Private Certifier.

Proposed § 124.1004 described how an organization or business concern becomes a Private Certifier. The SBA received five comments regarding this proposed section. One commenter stated that training should be mandatory. While SBA believes that training will be necessary in many cases, it may not be needed in every case. As such, SBA has retained its flexibility to require training where appropriate. A second commenter stated that a monitoring system should be developed. SBA agrees and has provided for SBA monitoring in § 124.1003. A third commenter stated that the Private Certifiers should be nonprofit organizations or governmental agencies and not private sector organizations. SBA considered this comment, but has decided not to restrict Private Certifiers in this way. Nonprofit organizations and state and local governmental agencies may apply and be granted status as Private Certifiers. However, SBA does not believe that those are the only entities reasonably capable of providing this service. Such a restriction is unnecessary and would be contrary to policies that generally encourage competition.

Proposed § 124.1004(f) prohibited a Private Certifier from certifying any company with which it has other business dealings, but did not specify a timeframe for limiting such dealings or what types of activities SBA was in fact attempting to limit. Upon further deliberation, SBA believes that this regulation should provide the general authority for SBA to prohibit conflicts of interest between a Private Certifier and those firms that come to it seeking an ownership and control determination and protect the integrity of the Private Certifier decision-making process. SBA believes that the document (e.g., contract) that authorizes an entity to act as a Private Certifier should detail the specific conditions or limitations on other business transactions between the Private Certifier and those firms for which it performs an ownership and control determination. These restrictions may pertain to past relationships (so that a Private Certifier could not process an SDB application for a firm with which it had certain business dealings in the past) or to future transactions (so that the Private Certifier could not engage in certain business relationships with a firm for a specified period of time after processing the firm's SDB application). SBA does not intend to preclude a Private Certifier from making a determination with respect to a firm's SDB status for both federal and state/local SDB programs. That is not the type of ''other business transactions'' that this regulation is intended to prohibit.

Proposed § 124.1005 allowed Private Certifiers to charge a reasonable fee to process the firm's determination of ownership and control. There were two comments on this section. The first commenter noted that the language was confusing. SBA revised the language in the first sentence in response to this comment. The second commenter, a Federal agency, stated that the fee should be the same whether or not the applicant receives SDB certification. SBA agrees and has adopted this language in the final regulation. In addition, SBA has amended this section to provide that SBA may charge a fee to process ownership and control determinations where SBA performs ownership and control determinations. From time to time, SBA will publish a Notice in the **Federal Register** identifying any fee that SBA decides to charge to process a firm's determination of ownership and control. Any funds received by SBA to make these determinations will be remitted promptly to the Treasury of the United States as miscellaneous receipts.

Proposed § 124.1008 explained the process to become certified as an SDB. SBA received several comments on this proposed section. Three comments supported the proposed language, and stated that this section would improve the efficiency of the process and reduce paperwork. A few comments addressed the need for a method of monitoring the Private Certifiers and their fees. As noted above, § 124.1003 of the final rule provides authority for SBA to include specific monitoring provisions in the

document approving an organization or concern to be a Private Certifier.

One commenter questioned the automatic inclusion of current 8(a) BD Participants as SDBs. SBA continues to believe that such inclusion is proper. An 8(a) BD concern's continuing eligibility as an SDB will be reviewed as part of the concern's annual review for the 8(a) BD program.

The final rule also removes all references in § 124.1008 to procuring agencies as certifiers. All SDB certifications will be made by SBA and its Private Certifiers.

One commenter specifically requested that an ANC-owned firm be permitted to apply for SDB status through the SBA Anchorage Office. To address this concern, SBA has added language to § 124.1008(a)(1) allowing SBA flexibility to direct where applications should be made.

Proposed § 124.1008(b) listed the required forms and documents to be submitted by the applicant for SDB certification. One commenter, noted that the required ''small business self certification'' should be included in this section. SBA does not adopt this comment. SBA concluded that it was not necessary to detail every form or piece of information that SBA might request from an SDB applicant. Instead, the final rule condenses § 124.1008(b) to provide that an SDB applicant must submit the same forms and attachments required by SBA when applying to the 8(a) BD program. This change gives SBA the flexibility to request whatever information is needed to make an informed decision.

SBA has clarified throughout this section that ownership and control determinations may be made by either SBA, or where SBA deems it appropriate, by Private Certifiers. SBA has added a new § 124.1008(d)(3) giving SBA the discretion in any case to analyze and determine whether a firm is owned and controlled by one or more individuals claiming disadvantage. SBA believes that this paragraph provides needed flexibility to the regulation to ensure that the SDB certification process runs smoothly in all circumstances. The final rule also adds a new § 124.1008(d)(4) which authorizes SBA's program office to re-evaluate an ownership and control decision by a Private Certifier where SBA receives credible evidence that the Private Certifier has substantially disregarded the applicable eligibility criteria. This provision provides to SBA the authority to quickly correct a determination that it believes to be clearly contrary to the eligibility requirements, and should promote more consistent decisions.

Proposed § 124.1008(e) was originally entitled ''SDB Certification.'' A commenter stated that this was misleading in light of the fact that subsection (e) dealt with disadvantaged status. SBA agrees and has renamed subsection (e) ''Disadvantaged determination.''

Proposed § 124.1008(e)(1) stated that those claiming disadvantaged status who are members of a designated group are presumed to be socially and economically disadvantaged. A Federal agency commenter suggested deleting the phrase ''and economically disadvantaged,'' contained in § 124.1008(e)(1) as inconsistent with proposed § 124.1002(c), which requires a net worth of less than $750,000. SBA does not agree that the language contained in § 124.1008(e)(1) conflicts with the monetary requirement of § 124.1002(c), and believes that eliminating the presumption for economic disadvantage would be contrary to the underlying statutory authority. The presumption of disadvantage for Federal SDB programs is based on the authority set forth in section 8(d) of the Small Business Act, 15 U.S.C. § 637(d). Section 8(d)(3)(C)(ii) clearly authorizes a presumption of both social and economic disadvantaged for members of certain designated groups. When members of the designated groups represent to SBA that they are disadvantaged, as part of a firm's application for SDB status, they represent that they meet the $750,000 net worth requirement for economic disadvantage. Absent credible evidence to the contrary, SBA will accept this representation because of the statutory presumption. Accordingly, SBA did not change the presumption in the final rule.

The final rule adds a new § 124.1008(e)(2)(ii). This provision states the obligations of the Private Certifier in the application process concerning individuals who are not members of a designated group. Proposed §§ 124.1008(e)(2) (ii) through (f) have been renumbered for easier understanding and subsection (f) has been renamed ''SDB Determination.''

Proposed § 124.1008(e)(2)(ii) stated that if one or more of the individuals upon whose status the Private Certifier relied in making its ownership and control decision is not disadvantaged, the Private Certifier would reject the firm's application for SDB status. One commenter stated that this language should be clarified to state that the firm would be rejected only if the disadvantaged status of that individual was needed to establish ownership and control. SBA agrees, and has amended renumbered § 124.1008(f)(2) to include this language.

The final rule also adds a new § 124.1008(i). This new paragraph provides that if a firm applying for SDB certification has a current, valid certification as a disadvantaged business enterprise (DBE) from a Department of Transportation (DOT) recipient, SBA may adopt the DBE certification as an SDB certification when determined to be appropriate.

Proposed § 124.1009 did not provide a procedure to remand an application back to a Private Certifier. A Federal agency commenter expressed concern that there was no such procedure in place when OHA overruled the Private Certifier's decision regarding ownership and control by those claiming disadvantaged status. SBA has revised § 124.1009 to remedy this omission. SBA has also expanded and clarified the procedures that will apply to an appeal of a decision of a Private Certifier in § 124.1009, and those relating to an appeal of an SBA decision in § 124.1008(f).

Proposed § 124.1010 provided that a firm could not represent itself as an SDB concern for purposes of receiving procurement preferences if it was not on the SBA-maintained list of qualified SDBs. SBA has amended this section to coincide with the final version of the FAR to provide that a firm may represent itself as an SDB if it has submitted an application for certification and that application is pending either at SBA or with a Private Certifier. The final rule further provides that SBA will make a determination on SDB status within 15 days where an SDB applicant is determined to be the successful offeror on a contract. In the event that SBA fails to make a determination within 15 days, the firm will not be eligible for award, and the procuring activity will award to another offeror.

Proposed § 124.1012 stated that a firm may reapply for certification 12 months after the date of the final SBA decision to decline the application. One commenter requested that the period for reapplication begin from the date of submission of the application, rather than denial. SBA does not agree with this suggestion, and has made no change.

Proposed § 124.1013 listed the criteria SBA would use to delete names on the SDB register. A Federal agency commenter noted that recent graduates of the 8(a) BD program are reviewed for social and economic disadvantage each year, through their final year of participation and, therefore, it is unnecessarily burdensome to require

them to apply for SDB certification immediately. SBA agreed and adopted this suggestion by adding a new § 124.1014, which clarifies how long an SDB certification lasts, and specifically allows a firm that has graduated from the 8(a) BD program to remain on the SBA-maintained list of qualified SDBs for a period of three years from the date of its last annual review in the 8(a) BD program.

Proposed § 124.1014 (§ 124.1015 in the final rule) addressed the effect of receiving an SDB certification. Proposed § 124.1014(d) stated that a firm must submit a new application every three years to remain on the SDB register. One commenter noted that a contract award that is not successfully challenged (i.e., the SDB status is upheld) should obviate the need for applying for a new certification. SBA agreed with this comment and has incorporated it in the new § 124.1014, dealing with how long an SDB certification lasts. The final rule provides that SDB status will run three years from the date SBA determines a firm to be disadvantaged in connection with a protest challenging its SDB status. This extension of SDB status applies only where SBA determines a firm to be an SDB on the merits. A firm's SDB status will not be extended where SBA merely dismisses a protest against it for some procedural reason (e.g., lack of timeliness or specificity). In addition, SBA added a new paragraph to clarify that 8(a) BD graduated firms will remain on the qualified list of SDBs for a period of three years from the date of their last annual review in the 8(a) BD program.

The final rule adds a new § 124.1016, authorizing SBA, in the absence of a protest, to re-evaluate the SDB status of a firm that is certified as an SDB where SBA receives credible evidence calling into question a firm's eligibility as an SDB. SBA added this section in response to a comment that was concerned about the possibility of a firm remaining on the list of qualified SDBs where it was clear that it no longer qualified as an SDB because no one had protested its SDB status. This section also provides that an SDB firm has an affirmative obligation to report any changes in ownership or control or any other circumstances that could adversely affect the firm's eligibility for SDB status to SBA.

The final rule adds a new § 124.1021(c) to clarify that SBA will consider a protest against a previously certified SDB which is an apparent successful offeror only where the protest presents credible evidence that the firm's circumstances have materially changed since SBA certified it as an SDB, or credible evidence that the firm's SDB application contained false or misleading information. SBA believes that this change is needed to give value to the SDB certification process. Without such a change, a firm's status as ''disadvantaged'' could be repeatedly challenged despite SBA ruling in its favor on one protest and despite its ownership and control remaining unchanged. Such challenges would impose a significant and costly burden on a firm having to defend its SDB status, as well as on SBA, and serve no useful purpose. SBA has also made conforming amendments to §§ 124.1015(c) and 124.1018(d) to recognize the limited right to protest the SDB status of a concern that has received an SDB certification from SBA.

**Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

SBA has determined that this rule is not a major rule as defined by Executive Order 12866 in that it is not likely to have an annual economic effect of $100 million or more on the economy, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. SBA has determined that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A summary of the Regulatory Flexibility Analysis follows. For a copy of the complete analysis, contact Calvin Jenkins, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, at (202) 205–6459.

**Executive Order 12866**

On May 9, 1997, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration proposed amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business concerns. 62 FR 25786. The amendments were intended to conform to a Department of Justice (DOJ) proposal to reform affirmative action in Federal procurement (*see* 61 FR 26042) and to comply with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S.Ct. 2097 (1995). The DOJ proposal addresses federal contracting with SDBs. Full implementation of the DOJ proposal requires revisions to the FAR, as well as regulatory changes by SBA and the Department of Commerce. For a full economic analysis of the changes to be made by the implementation of a government-wide SDB program, please refer to the analysis published with the FAR rule.

This final rule addresses only SBA's responsibilities under the SDB program. In brief summary, this rule requires SBA to (1) certify SDB concerns, including those owned by non-designated group members, and establish and maintain an updated list of qualified SDBs; and (2) resolve protests made challenging the eligibility of firms as SDBs for Federal procurement requirements. It also authorizes SBA to establish and oversee a national network of private entities to determine, where SBA deems it appropriate, whether firms seeking to be certified as SDBs are owned and controlled by individuals claiming to be socially and economically disadvantaged.

SBA's determination that this rule is not a major rule within the meaning of Executive Order 12866 is based on its analysis of the costs of implementing its responsibilities under the government-wide SDB program.

SBA has examined current information on procurement patterns, including the bidding behavior of small and small disadvantaged businesses to estimate the number of firms that will seek to be certified for the SDB program. In the first year, SBA estimates that about 30,000 firms will seek to be certified as SDBs. Current 8(a) firms (approximately 6,000 in number) meet all the tests for qualifying as SDBs, and will automatically be certified as SDBs.

Where SBA approves and authorizes a Private Certifier to make ownership and control determinations of firms seeking SDB certification, a Private Certifier may charge a reasonable fee for screening applications for completeness and for processing the ownership and control portion of applications. At the present time, it is uncertain to what extent Private Certifiers will be approved or used to make ownership and control determinations. SBA will make those determinations initially. The regulations authorize SBA to charge a fee in the future following a notice in the **Federal Register**. Should SBA elect to charge a fee, the notice will provide information as to the amount and when it will be charged.

SBA projects the impact of this program, based on this analysis, on those small businesses seeking to become certified SDBs, will be less than $15 million. This analysis is an estimate of costs for the first year of the program. Absent material changes or a successful protest, a certification of SDB status will

last three years. Firms claiming to be SDBs will certify that they continue to meet all applicable eligibility criteria for any federal contract during the three-year period.

**Summary of the Analysis Prepared Pursuant to the Regulatory Flexibility Act**

SBA believes that this rule may have a significant impact on a substantial number of small businesses. In fiscal year 1996, the federal government spent $197.6 billion on the procurement of goods and services. Small businesses were awarded $41.1 billion in prime contracts, representing approximately a 21 percent share of the total federal contract dollars. SDBs were awarded $10.3 billion in federal contracts, about 5 percent of all federal contract dollars. In addition, the federal contract dollars that went to SDBs was about 25 percent of all federal dollars that went to small businesses for the same period.

There are approximately 180,000 small firms registered on PRO-Net, SBA's database of small businesses actively seeking federal government contracts. SBA estimates that 30,000 small businesses will apply to be certified as SDBs in the first year of the program. This is a substantial number of small disadvantaged businesses interested in bidding on federal government contracts. In the proposed rule issued on August 14, 1998 (62 FR 43584–43628), SBA stated its intent to use Private Certifiers to determine ''ownership and control'' for purposes of the small and disadvantaged business program. We received no comments from the public concerning the economic impact of using Private Certifiers on small business. Although it is uncertain whether SBA will use Private Certifiers, SBA estimates, based on the fees charged by Private Certifiers for similar services, that the cost of a certification would range from $500 to $1,000. Similarly, if SBA elects to charge fees for certification, the fees would be equivalent to the fees charged by Private Certifiers. We have no estimates of the size of the small businesses that will apply to be certified or the value of the contracts that these small businesses will receive. Therefore, we cannot determine precisely the significance of the economic impact on small businesses.

For purposes of the Paperwork Reduction Act of 1995 (Public Law 104–13), this rule imposes new reporting or recordkeeping requirements on firms applying to be certified as SDBS. The rule requires such firms to submit evidence that they are owned and controlled by one or more disadvantaged individuals. It further requires the individuals claiming to be disadvantaged to submit representations of group membership and disadvantaged status or evidence of disadvantaged status to SBA. Once certified as an SDB, this rule does not require an SDB to report any other information to SBA or to maintain additional records.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

**List of Subjects in 13 CFR Part 124**

Government procurement, Hawaiian Natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance, Tribally-owned concerns.

Accordingly, for the reasons set forth above, SBA amends Title 13, Code of Federal Regulations (CFR), as follows:

## PART 124—[AMENDED]

1. The authority citation for 13 CFR part 124 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

2. Section 124.108 is amended by adding the following paragraph (f):

**§ 124.108 What other eligibility requirements apply for individuals or businesses?**

* * * * *

(f) *Achievement of benchmarks.* Where actual participation by disadvantaged businesses in a particular SIC Major Group exceeds the benchmark limitations established by the Department of Commerce, SBA, in its discretion, may decide not to accept an application for 8(a) BD participation from a concern whose primary industry classification falls within that Major Group.

3. Section 124.302 is amended by adding the following paragraph (d):

**§ 124.302 What is early graduation?**

* * * * *

(d) *Benchmark achievement.* SBA may graduate a Participant prior to the expiration of its program term where the Participant has substantially achieved the targets, objectives and goals of its business plan as adjusted under § 124.403(d) and its primary industry classification falls within a SIC Major Group in which the benchmarks described in § 124.403(d) have been achieved.

4. Section 124.403 is amended by adding paragraph (d) to read as follows:

**§ 124.403 How is a business plan updated and modified?**

* * * * *

(d) *Benchmark achievement.* Where actual participation by disadvantaged businesses in a particular SIC Major Group exceeds the benchmark limitations established by the Department of Commerce for that Major Group, SBA may adjust the targets, objectives and goals contained in the business plans of Participants whose primary industry classification falls within that Major Group. Any adjustment will take into account projected decreases in 8(a) and SDB contracting opportunities.

5. Section 124.504 is amended by redesignating paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

**§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?**

* * * * *

(d) *Benchmark achievement.* Where actual participation by disadvantaged businesses in a SIC Major Group exceeds the benchmark limitations established by the Department of Commerce for that Major Group, SBA may elect not to accept a requirement having a SIC code within the Major Group that is offered to SBA for award as an 8(a) contract. In determining whether to accept a requirement in such a case, SBA will consider the developmental needs of Participants and other anticipated contracting opportunities available to them.

* * * * *

6. Subpart B to part 124 is revised to read as follows:

## Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

124.1001 General applicability.
124.1002 What is a Small Disadvantaged Business (SDB)?
124.1003 What is a Private Certifier?
124.1004 How does an organization or business concern become a Private Certifier?
124.1005 Can a fee be charged to a firm to process the firm's application for SDB certification?
124.1006 Is there a list of Private Certifiers?
124.1007 How long may an organization or business concern be a Private Certifier?
124.1008 How does a firm become certified as an SDB?

124.1009 How does a firm appeal a decision of a Private Certifier?
124.1010 Can a firm represent itself to be an SDB if it has not yet been certified as an SDB?
124.1011 What is a misrepresentation of SDB status?
124.1012 Can a firm reapply for SDB certification?
124.1013 Is there a list of certified SDBs?
124.1014 How long does an SDB certification last?
124.1015 What is the effect of receiving an SDB certification?
124.1016 Can SBA re-evaluate the SDB status of a firm after SBA certifies it to be SDB?
124.1017 Who may protest the disadvantaged status of a concern?
124.1018 When will SBA not decide an SDB protest?
124.1019 Who decides disadvantaged status protests?
124.1020 What procedures apply to disadvantaged status protests?
124.1021 What format, degree of specificity, and basis does SBA require to consider an SDB protest?
124.1022 What will SBA do when it receives an SDB protest?
124.1023 How does SBA make disadvantaged status determinations in considering an SDB protest?
124.1024 Appeals of disadvantaged status determinations.

## Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

### § 124.1001 General applicability.

(a) This subpart defines a Small Disadvantaged Business (SDB). It also sets forth procedures by which a firm can apply to be recognized as an SDB, including procedures to be used by private sector entities approved by SBA for determining whether a particular concern is owned and controlled by one or more disadvantaged individuals or Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes (tribes) or Native Hawaiian Organizations (NHOs). Finally, this subpart establishes procedures by which SBA determines whether a particular concern qualifies as an SDB in response to a protest challenging the concern's status as disadvantaged. Unless specifically stated otherwise, the phrase ''socially and economically disadvantaged individuals'' in this subpart includes tribes, ANCs, CDCs, and NHOs.

(b) Only small firms that are owned and controlled by socially and economically disadvantaged individuals are eligible to participate in Federal SDB price evaluation adjustment, evaluation factor or subfactor, monetary subcontracting incentive, or set-aside programs, or SBA's section 8(d) subcontracting program.

(c) In order for a concern to represent that it is an SDB as a prime contractor for purposes of a Federal Government procurement, it must have:

(1) Received a certification from SBA that it qualifies as an SDB; or

(2) Submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination regarding that application from SBA or the Private Certifier.

(d) A firm cannot represent itself to be an SDB concern in order to receive a preference as an SDB for any Federal subcontracting program if it is not on the SBA-maintained list of qualified SDBs.

### § 124.1002 What is a Small Disadvantaged Business (SDB)?

(a) *Reliance on 8(a) criteria.* In determining whether a firm qualifies as an SDB, the criteria of social and economic disadvantage and other eligibility requirements established in subpart A of this part apply, including the requirements of ownership and control and disadvantaged status, unless otherwise provided in this subpart. Qualified Private Certifiers must use the 8(a) criteria applicable to ownership and control in determining whether a particular firm is actually owned and controlled by one or more individuals claiming disadvantaged status.

(b) *SDB eligibility criteria.* A small disadvantaged business (SDB) is a concern:

(1) Which qualifies as small under part 121 of this title for the size standard corresponding to the applicable four digit Standard Industrial Classification (SIC) code.

(i) For purposes of SDB certification, the applicable SIC code is that which relates to the primary business activity of the concern;

(ii) For purposes related to a specific Federal Government contract, the applicable SIC code is that assigned by the contracting officer to the procurement at issue;

(2) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals as set forth in § 124.105. For the requirements relating to tribes and ANCs, NHOs, or CDCs, *see* §§ 124.109, 124.110, and 124.111, respectively.

(3) Except for tribes, ANCs, NHOs, and CDCs, whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals. For the requirements relating to tribes and ANCs, NHOs, or CDCs, *see* §§ 124.109, 124.110, and 124.111, respectively.

(4) Which, for purposes of SDB procurement mechanisms authorized by 10 U.S.C. 2323 (such as price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentives, or SDB set-asides) relating to the Department of Defense, NASA and the Coast Guard only, has the majority of its earnings accruing directly to the socially and economically disadvantaged individuals.

(c) *Disadvantaged status.* In assessing the personal financial condition of an individual claiming economic disadvantage, his or her net worth must be less than $750,000 after taking into account the exclusions set forth in § 124.104(c)(2).

(d) *Additional eligibility criteria.* Except for tribes, ANCs, CDCs and NHOs, each individual claiming disadvantaged status must be a citizen of the United States.

(e) *Potential for success not required.* The potential for success requirement set forth in § 124.107 does not apply as an eligibility requirement for an SDB.

(f) *Joint ventures.* Joint ventures are permitted for SDB procurement mechanisms (such as price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentives, or SDB set-asides), provided that the requirements set forth in this paragraph are met.

(1) The disadvantaged participant(s) to the joint venture must have:

(i) Received an SDB certification from SBA; or

(ii) Submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination regarding that application.

(2) For purposes of this paragraph, the term joint venture means two or more concerns forming an association to engage in and carry out a single, specific business venture for joint profit. Two or more concerns that form an ongoing relationship to conduct business would not be considered ''joint venturers'' within the meaning of this paragraph, and would also not be eligible to be certified as an SDB. The entity created by such a relationship would not be owned and controlled by one or more socially and economically disadvantaged individuals. Each contract for which a joint venture submits an offer will be evaluated on a case by case basis.

(3) Except as set forth in 13 CFR 121.103(f)(3), a concern that is owned and controlled by one or more socially and economically disadvantaged

individuals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated with such other concern(s) for size purposes. If the exception does not apply, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract.

(4) An SDB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for performance of the contract.

(5) The joint venture must perform any applicable percentage of work required of SDB offerors, and the SDB joint venturer(s) must perform a significant portion of the contract.

(g) *Ownership restrictions for non-disadvantaged individuals.* The ownership restrictions set forth in § 124.105 (g) and (h) for non-disadvantaged individuals and concerns do not apply for purposes of determining SDB eligibility.

**§ 124.1003 What is a Private Certifier?**

A Private Certifier is an organization or business concern approved by SBA to determine whether firms are owned and controlled by one or more individuals claiming disadvantaged status. SBA may elect to arrange for one or more Private Certifiers to perform certain functions in the SDB Certification process. When that election is made, the provisions of §§ 124.1004 through 124.1007 will apply. SBA will establish more detailed standards regarding qualifications, monitoring, procedures and use, if any, of Private Certifiers in specific contracts or agreements between SBA and the Private Certifiers.

**§ 124.1004 How does an organization or business concern become a Private Certifier?**

(a) SBA may execute contracts or agreements with organizations or business concerns seeking to become Private Certifiers. Any such contract or agreement will include provisions for the oversight, monitoring, and evaluation of all certification activities by SBA.

(b) The organization or business concern must demonstrate a knowledge of SBA's regulations regarding ownership and control, as well as business organizations and the legal principles affecting their ownership and control generally, including stock issuances, voting rights, convertability of debt to equity, options, and powers and responsibilities of officers and directors, general and limited partners, and limited liability members.

(c) The organization or concern must also, along with its principals, demonstrate good character. Good character does not exist for these purposes if the organization or concern or any of its principals:

(1) Is debarred or suspended under any Federal procurement or non-procurement debarment and suspension regulations; or

(2) Has been indicted or convicted for any criminal offense or suffered a civil judgment indicating a lack of business integrity.

(d) As a condition of approval, SBA may require that appropriate officers and/or key employees of the concern attend a training session on SBA's rules and requirements.

(e) An organization or concern seeking to become a Private Certifier must agree to provide access to SBA of its books and records when requested, including records pertaining to its certification activities. Once SBA approves the organization or concern to be a Private Certifier, SBA may review this information, as well as the decisions of the Private Certifier, in determining whether it will renew or extend the term of the Private Certifier, or terminate the Private Certifier for cause.

(f) SBA will include in any contract or agreement document authorizing an entity to act as a Private Certifier appropriate conditions to prohibit conflicts of interests between the Private Certifier and the firms for which it processes SDB applications and to protect the integrity of the decision-making process.

**§ 124.1005 Can a fee be charged to a firm to process the firm's application for SDB certification?**

(a) With SBA's approval, a Private Certifier may charge a reasonable fee to a firm in order to screen the firm's application for completeness and to process a determination of ownership and control. The fee must be for actual services rendered and must not be related to whether or not the business concern is found to be owned and controlled by one or more individuals or entities claiming disadvantaged status.

(b) Where SBA makes the determination of ownership and control, SBA may collect a fee comparable to that which would be charged by a Private Certifier. From time to time, SBA will publish a Notice in the **Federal Register** identifying any fee that SBA will charge to process a firm's determination of ownership and control. SBA will promptly remit any funds received pursuant to this section to the Treasury of the United States as miscellaneous receipts.

**§ 124.1006 Is there a list of Private Certifiers?**

SBA will maintain a list of approved Private Certifiers on SBA's Home Page on the Internet. Any interested person may also obtain a copy of the list from the local SBA district office.

**§ 124.1007 How long may an organization or business concern be a Private Certifier?**

(a) SBA's approval document will specify how long the organization or concern may be a Private Certifier. The initial contract or agreement will have a base period of one year, and may include option years or renewal provisions.

(b) SBA may terminate a contract or agreement with an organization or business concern which is a Private Certifier for the convenience of the Government at any time, and may terminate the contract or agreement for default where appropriate. Specific grounds for termination for default include, but are not limited to:

(1) Charging improper, unreasonable or contingent fees in violation of § 124.1005;

(2) Engaging in prohibited business transactions with the firms for which it processes SDB applications in violation of § 124.1004(f); or

(3) A demonstrated record of ownership and control determinations that are overturned on appeal by SBA's Office of Hearings and Appeals (OHA) or by SBA as part of an SDB protest.

**§ 124.1008 How does a firm become certified as an SDB?**

Any firm may apply to be certified as an SDB. SBA's field offices will provide further information and required application forms to any firm interested in SDB certification. In order to become certified as an SDB, a firm must apply to SBA or, if directed by SBA, to a Private Certifier. The application must include evidence demonstrating that the firm is owned and controlled by one or more individuals claiming disadvantaged status, along with certifications or narratives regarding the disadvantaged status of such individuals. *See* paragraph (e)(1) of this section. The firm also must submit information necessary for a size determination. *See* § 121.1008. Current 8(a) BD Participants do not need to submit applications for SDB status. These concerns automatically qualify as SDBs by virtue of their status as 8(a) BD concerns. An 8(a) Participant's continuing eligibility as an SDB will be

reviewed as part of the concern's 8(a) annual review.

(a) *Filing an SDB application.* (1) An interested firm must first submit a complete application to SBA's Assistant Administrator for Small Disadvantaged Business Certification and Eligibility (AA/SDBCE), Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, or to a specific SBA field office or an approved Private Certifier if directed by SBA.

(2) The firm must identify which individual(s) or entities are claiming disadvantaged status.

(b) *Required forms.* Each firm seeking to be certified as an SDB must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments may include, but not be limited to, financial statements, Federal personal and business tax returns and personal history statements. The application package may be in the form of an electronic application.

(c) *Application processing.* (1) SBA or a Private Certifier will advise each applicant generally within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required. If the application is not complete, SBA or the Private Certifier will return the application to the firm, and will notify the firm that it may reapply when its application is complete.

(2) The burden is on the applicant to demonstrate that those individuals claiming disadvantaged status own and control the concern.

(d) *Ownership and control decision.* SBA or a Private Certifier will determine whether those individuals claiming disadvantaged status own and control the applicant firm within 30 days of receipt of a complete application package, whenever practicable..

(1) Where a Private Certifier determines ownership and control, the Private Certifier will issue a written decision as to whether the applicant is owned and controlled by the individuals identified as claiming disadvantaged status.

(i) If the Private Certifier finds that the applicant is owned and controlled by the individuals claiming disadvantaged status, the Private Certifier will forward the application to SBA along with a copy of its ownership and control determination and the information required by paragraph (e)(2)(ii) of this section, where appropriate.

(ii) If the Private Certifier finds that the applicant is not owned and controlled by the individuals claiming disadvantaged status, its decision must state the specific reasons for the finding, and inform the applicant of its right to appeal the decision to SBA pursuant to § 124.1009.

(2) Where SBA determines ownership and control, SBA will first determine whether the applicant is owned and controlled by the individual(s) claiming to be disadvantaged. If SBA determines that the applicant is not owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a written decision addressing only the ownership and control issues. If SBA determines that the applicant is owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a single written decision as to whether the applicant qualifies as an SDB. Such a determination will include the ownership and control of the firm, the size status of the firm, and the disadvantaged status of those individuals claiming to be disadvantaged.

(3) In its sole discretion, SBA may analyze and determine whether a firm is owned and controlled by one or more individuals claiming disadvantaged status notwithstanding the availability of a Private Certifier to make such a decision.

(4) SBA reserves the right to re-evaluate an approved decision on ownership and control by a Private Certifier in a case where it has credible evidence that the Private Certifier has substantially disregarded the eligibility criteria.

(e) *Disadvantaged determination.* Once a concern receives a decision finding that it is owned and controlled by those individuals or entities claiming disadvantaged status (either through an initial determination or on appeal), SBA will determine whether the other eligibility criteria are met, and, if so, will include the SDB on the SBA-maintained list of qualified SDBs. SBA will make this determination within 30 days of receiving an SDB application, if practicable.

(1) *Members of designated groups.* (i) Those individuals claiming disadvantaged status that are members of the same designated groups that are presumed to be socially disadvantaged for purposes of SBA's 8(a) BD program (*see* § 124.103(b)) are presumed to be socially and economically disadvantaged for purposes of SDB certification. These individuals must represent that they are members of one of the designated groups, that they are identified as a member of one of the designated groups, that their net worth is less than $750,000 after taking into account the exclusions set forth in § 124.104(c)(2), and that they are citizens of the United States.

(ii) Absent credible evidence to the contrary, SBA may accept these representations as true and certify the firm as an SDB.

(2) *Individuals not members of designated groups.* (i) Each individual claiming disadvantaged status who is not a member of one of the designated groups must submit a statement identifying personally how his or her entry into or advancement in the business world has been impaired because of personally specific factors (*see* § 124.103(c)), and how his or her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities (*see* §§ 124.103(c) and 124.104).

(ii) Where a Private Certifier determines ownership and control, the Private Certifier must also review the disadvantaged status submission and any other required information, and send to SBA the following:

(A) An executive summary and analysis of the disadvantaged status submission;

(B) The application and all supporting documentation; and

(C) A certification that the application is complete and suitable for evaluation.

(3) *Concerns owned by tribes, ANCs, CDCs, or NHOs:* SBA will process SDB applications from concerns owned and controlled by tribes, ANCs, CDCs, or NHOs in the same way as those from concerns owned by individuals who are members of designated groups.

(f) *SDB Determination.* (1) If SBA's AA/SDBCE determines that the individual(s) claiming disadvantage are disadvantaged and other eligibility criteria are met, he or she will certify the firm as an SDB.

(2) If SBA's AA/SDBCE determines that one or more of the individuals claiming to be disadvantaged is not disadvantaged and their disadvantaged status is required to establish disadvantaged ownership and control of the applicant, or any of the other eligibility criteria are not met, he or she will reject the firm's application for SDB certification. The AA/SDBCE will issue a written decision setting forth SBA's reasons for decline.

(3) Pursuant to part 134 of this title, a firm may appeal to OHA the AA/SDBCE's decision that one or more of the individuals claiming disadvantaged status is not disadvantaged, or, where SBA determines ownership and control, that those claiming disadvantaged status do not own and control the applicant. (*See* § 124.1009 for appeals from decisions by Private Certifiers.)

(i) The firm must serve SBA's Associate General Counsel for General Law with a copy of the appeal.

(ii) OHA will determine whether SBA's decision in either case was arbitrary, capricious, or contrary to law. OHA's review is limited to the facts that were before SBA at the time of its decision and any arguments submitted in or in response to the appeal. OHA will not consider any facts beyond those that were already presented to SBA unless the administrative judge determines that manifest injustice would occur if the appeal were limited to the record.

(4) A firm may also request a formal size determination pursuant to part 121 of this title where SBA finds that the firm is not small.

(g) *Current 8(a) BD program participants.* Any firm that is currently a Participant in SBA's 8(a) BD program need not seek an ownership and control determination or apply to SBA for a separate certification as an SDB. SBA will certify current 8(a) BD Participants as SDBs, and automatically include them on the list of qualified SDBs.

(h) *8(a) BD graduates.* SBA will automatically certify a firm that has graduated from the SBA's 8(a) BD program to be an SDB, provided SBA determined that the firm continued to be eligible for the 8(a) BD program as part of an annual review within the last three years. (*See* § 124.1014(b)).

(i) *Certification by DOT recipient.* If a firm applying for SDB certification has a current, valid certification as a disadvantaged business enterprise (DBE) from a Department of Transportation (DOT) recipient, SBA may adopt the DBE certification as an SDB certification when determined by the AA/SDBCE or designee to be appropriate.

**§ 124.1009 How does a firm appeal a decision of a Private Certifier?**

Where a Private Certifier performs an ownership and control determination and finds that a firm is not owned and controlled by the individual(s) claiming disadvantaged status, the firm may appeal that decision to OHA pursuant to part 134 of this title. The firm must serve SBA's Associate General Counsel for General Law and the applicable Private Certifier with a copy of the appeal.

(a) The Private Certifier must submit to OHA the full record upon which its decision was based within two days of receiving notification that an appeal has been filed.

(b) The Private Certifier and SBA may each elect to appear or not appear in an appeal proceeding.

(c) OHA's review is limited to the facts that were before the Private Certifier at the time of its final decision and any arguments submitted in or in response to the appeal. OHA will not consider any facts beyond those that were already presented to the Private Certifier unless the administrative judge determines that manifest injustice would occur if the appeal were limited to the record.

(d) OHA will decide whether it believes that the facts support by a preponderance of the evidence the Private Certifier's determination regarding ownership and control.

(e) Where the facts presented in the record leave significant doubt as to whether the petitioner is or is not owned and controlled by one or more individuals claiming to be disadvantaged, the administrative judge may remand the case to the Private Certifier for reconsideration in accord with his or her remand order.

(f) If OHA finds that the firm is owned and controlled by the individual(s) claiming disadvantaged status, OHA will refer the application to SBA for further processing. If OHA finds that the firm is not owned and controlled by such individual(s), the administrative judge will state the reasons for that decision, which will be the final decision of the Agency.

**§ 124.1010 Can a firm represent itself to be an SDB if it has not yet been certified as an SDB?**

(a) *General rule.* Except as set forth in paragraph (d) of this section, a firm may represent itself to be an SDB concern in order to receive a preference as an SDB for any Federal procurement program if it has submitted a complete application for SDB certification to SBA or a Private Certifier and it has not received a negative determination regarding that application from SBA or the Private Certifier. A firm that has received a negative determination of ownership and control or a negative determination regarding its disadvantaged status and is awaiting the resolution of its appeal of that determination may not represent itself to be an SDB.

(b) *Where applicant becomes successful offeror.* If a concern becomes the apparent successful offeror on a contract for which it would receive a benefit for being an SDB while its application for SDB certification is pending, either at SBA or a Private Certifier, the contracting officer for the particular contract must immediately inform SBA's AA/SDBCE. SBA will then prioritize the firm's SDB application and make a determination regarding the firm's status as an SDB within 15 days from the date that SBA received the contracting officer's notification.

(1) Where the apparent successful offeror's completed application is pending an ownership and control determination with a Private Certifier, the concern must inform SBA which Private Certifier has its application. SBA will immediately contact the Private Certifier to require the Private Certifier to complete its ownership and control determination within 5 days of SBA's notification. In appropriate circumstances, SBA may undertake to make the determination itself, and may recoup the cost of the determination from the Private Certifier.

(2) If requested to do so by the procuring activity contracting officer, SBA will determine whether other offerors are SDBs where they have represented that their completed applications for SDB status are pending at SBA or a Private Certifier and they could receive the award if SBA determines that the apparently successful offeror is not an SDB.

(3) If the contracting officer does not receive an SBA determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer will presume that the apparently successful offeror, and any other offerors referred to SBA in connection with the same procurement by the contracting officer, are not disadvantaged, and will make award accordingly, unless the contracting officer grants an extension to the 15-day response period.

(c) *Representation as SDB for statistical purposes.* A firm may represent itself as an SDB concern for general statistical purposes without regard to any application for SDB certification or its inclusion on the SBA-maintained list of qualified SDB's.

(d) *Subcontracting programs.* Only firms that are on the SBA-maintained list of qualified SDBs may represent themselves as SDB concerns in order to receive a preference as an SDB for any Federal subcontracting program.

**§ 124.1011 What is a misrepresentation of SDB status?**

(a) Any person or entity that misrepresents a firm's status as a ''small business concern owned and controlled by socially and economically disadvantaged individuals'' (''SDB status'') in order to obtain an 8(d) or SDB contracting opportunity or preference will be subject to the penalties imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as well as any other penalty authorized by law.

(b) A representation of SDB status by any firm that SBA has found not to be an SDB (either in connection with an SDB application or protest) will be deemed a misrepresentation of SDB status, unless and until the firm reapplies for and obtains SDB certification.

**§ 124.1012 Can a firm reapply for SDB certification?**

(a) A concern which has been denied SDB certification may reapply for certification at any time 12 months or more after the date of the most recent final decision of SBA to decline its application (either on appeal of an ownership and control determination, or a negative finding of disadvantaged status).

(b) A concern which received a decision that it was not owned and controlled by the individual(s) claiming disadvantaged status from a Private Certifier and does not appeal that decision to OHA may apply for a new ownership and control determination at any time.

**§ 124.1013 Is there a list of certified SDBs?**

(a) If SBA certifies a firm to be an SDB, SBA will enter the name of the firm into an SBA-maintained central on-line register, such as PRO-Net.

(b) The register of SDBs will contain the names of all firms that are currently certified to be SDBs, including the names of all firms currently participating in SBA's 8(a) BD program.

(c) On a continuing basis, SBA will delete from the on-line register those firms that have:

(1) Graduated or been terminated from SBA's 8(a) BD program for any reason and have not otherwise received SDB certification (*see*, §§ 124.1008(h) and 124.1014(b) for treatment of 8(a) graduates);

(2) Been determined not to be an SDB in response to an SDB protest brought under § 124.1017; or

(3) Other than current 8(a) Participants, not received a renewed SDB certification after being on the register for three years (*see* § 124.1014(c)).

**§ 124.1014 How long does an SDB certification last?**

(a) Once SBA certifies a firm to be an SDB by placing it on the list of qualified SDBs, the firm will generally remain on the SBA-maintained list of certified SDBs for a period of three years from the date of its certification.

(1) A firm's SDB certification will extend beyond three years where SBA finds the firm to be an SDB:

(i) On the merits in connection with a particular protest (*see* § 124.1023(h)(2));

(ii) In connection with an SBA-initiated SDB determination (*see* § 124.1016(a)(2)); or

(iii) As part of an 8(a) BD annual review.

(2) Where SBA finds a firm not to be an SDB in connection with an SDB protest, an SBA-initiated SDB determination, or an 8(a) BD annual review, SBA will immediately decertify the firm as an SDB and remove it from the qualified list of SDBs.

(b) A firm that graduates from the 8(a) BD program will remain on the list of certified SDBs for a period of three years from the date of its last annual review.

(c) To remain on the SDB register after three years, a firm whose status as an SDB has not been upheld in connection with a protest or an SBA-initiated SDB determination, or has not been certified as an eligible 8(a) Participant as part of an annual review, must submit a new application and receive a new certification.

**§ 124.1015 What is the effect of receiving an SDB certification?**

(a) A firm that is certified to be an SDB may represent itself as an SDB for such purposes as Federal price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentive programs, section 8(d) subcontracts, SDB set-asides, or any other programs which accept an SBA certification. A contracting officer may award a contract based on a firm's representation that it is a certified SDB absent a protest that the protested concern's circumstances have materially changed since SBA certified it as an SDB, or that the protested concern's SDB application contained false or misleading information (*see* § 124.1018(d)).

(b) For purposes of a particular Federal procurement, the firm must represent that it is both disadvantaged and small at the time it submits its initial offer including price (see part 121 of this title). At the same time, the firm must also represent that no material change has occurred in its SDB status since its SDB certification, or from the date of its application for SDB certification if its application has not yet been processed, and must specifically represent that the net worth of the disadvantaged individuals (not including concerns owned by tribes, ANCs, CDCs, or NHOs) upon whom the SDB certification was based still does not exceed $750,000.

(c) A firm's status as ''disadvantaged'' or ''small'' may be protested pursuant to §§ 124.1017 through 124.1021 and §§ 121.1001 through 121.1005, respectively, despite the presence of the firm on the SDB register, provided the protest contains specific allegations that the firm's circumstances have materially changed since SBA certified it as an SDB, or that the firm's SDB application contained false or misleading information.

**§ 124.1016 Can SBA re-evaluate the SDB status of a firm after SBA certifies it to be SDB?**

(a) SBA may initiate an SDB determination whenever it receives credible information calling into the question a firm's eligibility as an SDB, including an adverse determination from a DOT recipient of the firm's status as a DBE. Upon its completion of an SDB determination, SBA will issue a written decision regarding the SDB status of the questioned firm.

(1) If SBA finds that the firm does not qualify as an SDB, SBA will decertify the firm as an SDB, and immediately remove the firm from the list of qualified SDBs. The firm may appeal SBA's decision to OHA consistent with the provisions of § 124.1008(f) and part 134 of this chapter.

(2) If SBA finds that the firm continues to qualify as an SDB, the determination remains in effect for three years from the date of the decision under the same conditions as if the concern had been granted SDB certification under § 124.1008.

(b) An SDB firm must report within 10 days to the AA/SDBCE any changes in ownership and control or any other circumstances which could adversely affect its eligibility as an SDB.

**§ 124.1017 Who may protest the disadvantaged status of a concern?**

(a) In connection with a requirement for which the apparent successful offeror has invoked an SDB evaluation adjustment or an SDB set-aside, the following entities may protest the disadvantaged status of the apparent successful offeror:

(1) Any other concern which submitted an offer for that requirement, unless the contracting officer has found the concern to be non-responsive or outside the competitive range, or SBA has previously found the protesting concern to be ineligible for the requirement at issue;

(2) The procuring activity contracting officer; or

(3) SBA.

(b) In connection with an 8(d) subcontract, or a requirement for which the apparent successful offeror received an evaluation adjustment for proposing

one or more SDB subcontractors, the procuring activity contracting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other interested parties may submit information to the contracting officer or SBA in an effort to persuade the contracting officer or SBA to initiate a protest.

(c) An interested party seeking to protest both the disadvantaged status and size of an apparent successful SDB offeror must submit two separate protests, one as to disadvantaged status pursuant to this subpart, and one as to size pursuant to part 121 of this title. An interested party seeking to protest only size of an apparent successful SDB offeror must submit a size protest to the contracting officer pursuant to part 121.

**§ 124.1018 When will SBA not decide an SDB protest?**

(a) SBA will not decide a protest as to disadvantaged status of any concern other than the apparent successful offeror.

(b) SBA will not normally consider a post award protest. SBA may consider a post award protest in its discretion where it determines that a protest decision after award would have a practical effect (e.g., where the contracting officer agrees to terminate the contract if the protest is sustained).

(c) SBA will not decide an untimely protest (see § 124.1020(c)).

(d) SBA will not decide a non-specific protest or one that does not present credible evidence that the protested concern's circumstances have materially changed since SBA certified it as an SDB, or that the protested concern's SDB application contained false or misleading information (*see* § 124.1021).

(e) An interested party may appeal SBA's dismissal of a protest for lack of specificity, timeliness, or a basis upon which SBA will consider a protest to SBA's Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development (DADA/GC&MED) pursuant to § 124.1024.

**§ 124.1019 Who decides disadvantaged status protests?**

In response to a protest challenging the disadvantaged status of a concern, the SBA's AA/SDBCE will determine whether the concern is disadvantaged.

**§ 124.1020 What procedures apply to disadvantaged status protests?**

(a) *General.* The protest procedures described in this section are separate and distinct from those governing size protests and appeals. All protests relating to whether a concern is a ''small'' business for purposes of any Federal program, including SDB set-asides and SDB evaluation adjustments, must be filed and processed pursuant to part 121 of this title.

(b) *Filing.* (1) All protests challenging the disadvantaged status of a concern with respect to a particular Federal procurement requirement must be submitted in writing to the procuring activity contracting officer, except in cases where the contracting officer or SBA initiates a protest.

(2) Any contracting officer who initiates a protest must submit the protest in writing to SBA in accord with paragraph (c) of this section.

(3) In cases where SBA initiates a protest, the protest must be submitted in writing to the AA/SDBCE and notification provided in accord with § 124.1022(a).

(c) *Timeliness of protest.* (1) *SDB evaluation adjustment and set-aside protests.* (i) *General.* In order for a protest to be timely, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions.

(ii) *Oral protests.* An oral protest relating to an SDB set-aside or SDB evaluation adjustment made to the contracting officer within the allotted 5-day period will be considered a timely protest only if the contracting officer receives a confirming letter postmarked, FAXed, or delivered no later than one calendar day after the date of such oral protest.

(iii) *Protests of contracting officers or SBA.* The time limitations in paragraph (c)(1)(i) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (c)(3) of this section.

(iv) *Untimely protests.* A protest received after the time limits set forth in this paragraph (c)(1) will be dismissed by SBA.

(2) *Section 8(d) protests.* In connection with an 8(d) subcontract, the contracting officer or SBA must submit a protest to the AA/SDBCE prior to the completion of performance by the intended 8(d) subcontractor.

(3) *Premature protests.* A protest in connection with any procurement which is submitted by any person, including the contracting officer, before bid opening or notification of intended award, whichever applies, will be considered premature, and will be returned to the protestor without action. A contracting officer that receives a premature protest must return it to the protestor without submitting it to the SBA.

(d) *Referral to SBA.* (1) Any contracting officer who receives a protest that is not premature must promptly forward it to the SBA's AA/SDBCE, 409 3rd Street, SW, Washington, DC 20416.

(2) A contracting officer's referral of a protest to SBA must contain the following:

(i) The written protest and any accompanying materials;

(ii) The date on which the protest was received by the contracting officer;

(iii) A copy of the protested concern's selfrepresentation as an SDB, and the date of such self-representation; and

(iv) The date of bid opening or the date on which notification of the apparent successful offeror was sent to all unsuccessful offerors, as applicable.

**§ 124.1021 What format, degree of specificity, and basis does SBA require to consider an SDB protest?**

(a) *Format.* An SDB protest need not be in any specific format in order for SBA to consider it.

(b) *Specificity.* A protest must be sufficiently specific to provide reasonable notice as to all grounds upon which the protested concern's disadvantaged status is challenged.

(1) SBA will dismiss a protest that merely asserts that the protested concern is not disadvantaged, without setting forth specific facts or allegations.

(2) The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely.

(c) *Basis.* SBA will consider a protest challenging whether the apparent successful offeror is owned and controlled by one or more socially and economically disadvantaged individuals, including whether one or more of the individuals claiming disadvantaged status is in fact socially or economically disadvantaged, only if the protest presents credible evidence that the firm's circumstances have materially changed since SBA certified it as an SDB, or that the firm's SDB application contained false or misleading information.

**§ 124.1022 What will SBA do when it receives an SDB protest?**

(a) Upon receipt of a protest challenging the disadvantaged status of a concern, the AA/SDBCE, or designee, will immediately notify the protestor and the contracting officer of the date the protest was received and whether it

will be processed or dismissed for lack of timeliness or specificity.

(b) In cases where the protest is timely and sufficiently specific, the AA/SDBCE, or designee, will also immediately advise the protested concern of the protest and forward a copy of it to the protested concern.

(1) The AA/SDBCE, or designee, is authorized to ask the protested concern to provide any or all of the following information and documentation, completed so as to show the circumstances existing on the date of self-representation: SBA Form 1010A, ''Statement of Personal Eligibility'' for each individual claiming disadvantaged status; SBA Form 1010B, ''Statement of Business Eligibility;'' SBA Form 413, ''Personal Financial Statement,'' for each individual claiming disadvantaged status; information as to whether the protested concern, or any of its owners, officers or directors, have applied for admission to or participated in the SBA's 8(a) BD program and if so, the name of the company which applied or participated and the date of the application or entry into the program; business tax returns for the last two completed fiscal years prior to the date of self-representation; personal tax returns for the last two years prior to the date of self-representation for all individuals claiming disadvantaged status, all officers, all directors and for any individual owning at least 10% of the business entity; annual business financial statements for the last two completed fiscal years prior to the date of self-representation; a current monthly or quarterly business financial statement no older than 90 days; articles of incorporation; corporate by-laws; partnership agreements; limited liability company articles of organization; and any other relevant information as to whether the protested concern is disadvantaged.

(2) SBA's disadvantaged status determination need not be limited to consideration only of the issues raised in the protest. SBA may consider other applicable criteria.

(3) Unless the protest presents specific credible information which calls into question the veracity of application or other documents previously submitted to SBA by a current Participant in SBA's 8(a) BD program, SBA will allow the Participant to submit, in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit or declaration that circumstances concerning the ownership and control of the business and the disadvantaged status of its principals have not changed since its application or entry into the program or its most recent annual review, and a copy of its most recently completed annual review.

(i) If the ownership or control of the business or the disadvantaged status of any principals have changed, the protested concern must comply with paragraph (b)(1) of this section.

(ii) An affidavit or declaration may be allowed only if SBA admitted the protested concern to the 8(a) BD program, or conducted an annual review of the protested concern, during the 12month period preceding the date on which SBA receives the protest, and if proceedings to suspend, terminate or early graduate the concern from the 8(a) BD program are not pending.

(c) Within 10 working days of the date that notification of the protest was received from the AA/SDBCE or designee, the protested concern must submit to the AA/SDBCE or designee, by personal delivery, FAX, or mail, the information and documentation requested pursuant to paragraph (b)(1) of this section or the affidavit permitted by paragraph (b)(2) of this section. Materials submitted must be received by the close of business on the 10th working day.

(1) SBA will consider only materials submitted timely, and the late or non-submission of materials needed to make a disadvantaged status determination may result in sustaining the protest.

(2) The burden is on the protested concern to demonstrate its disadvantaged status, whether or not it is currently shown on the list of qualified SDBs.

(3) The protested concern must timely submit to SBA any information it deems relevant to a determination of its disadvantaged status.

**§ 124.1023 How does SBA make disadvantaged status determinations in considering an SDB protest?**

(a) *General.* The AA/SDBCE, or designee, will determine a protested concern's disadvantaged status within 15 working days after receipt of a protest. If the procuring activity contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer may presume that the challenged offeror is disadvantaged, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(b) *Award after protest.* (1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until:

(i) The SBA has made an SDB determination, or

(ii) 15 working days have expired since SBA's receipt of a protest and the contracting officer has not agreed to an extension of the 15-day response period.

(2) Notwithstanding paragraph (b)(1) of this section, the contracting officer may award a contract after the receipt of an SDB protest where he or she determines in writing that an award must be made to protect the public interest.

(c) *Withdrawal of protest.* If a protest is withdrawn, SBA will not complete a new disadvantaged status determination, and a previous SDB certification will stand.

(d) *Basis for determination.* (1) Except with respect to a concern which is a current Participant in SBA's 8(a) BD program and is authorized under § 124.1022(b)(3) to submit an affidavit concerning its disadvantaged status, the disadvantaged status determination will be based on the protest record, including reasonable inferences therefrom, as supplied by the protestor, protested concern, SBA or others.

(2) SBA may in its discretion make a part of the protest record information already in its files, and information submitted by the protestor, the protested concern, the contracting officer, or other persons contacted for additional specific information.

(e) *Disadvantaged status.* In evaluating the social and economic disadvantage of individuals claiming disadvantaged status, SBA will consider the same information and factors set forth in §§ 124.103 and 124.104. As provided in § 124.1002(c), individuals claiming disadvantaged status must have a net worth that is less than $750,000, after taking into account the exclusions set forth in § 124.104(c)(2).

(f) *Disadvantaged status determination.* SBA will render a written determination including the basis for its findings and conclusions.

(g) *Notification of determination.* After making its disadvantaged status determination, the SBA will immediately notify the contracting officer, the protestor, and the protested concern of its determination. SBA will promptly provide by certified mail, return receipt requested, a copy of its written determination to the same entities, consistent with law.

(h) *Results of an SBA disadvantaged status determination.* A disadvantaged status determination becomes effective immediately.

(1) If the concern is found not to be disadvantaged, the determination remains in full force and effect unless reversed upon appeal by SBA's DADA/GC&MED, or designee, pursuant to § 124.1024, or the concern is certified to

be an SDB under § 124.1008. The concern is precluded from applying for SDB certification for 12 months from the date of the final agency decision (whether by the AA/SDBCE, or designee, without an appeal, or by the DADA/GC&MED, or designee, on appeal).

(2) If the concern is found to be disadvantaged, the determination remains in full force and effect unless and until reversed upon appeal by SBA's DADA/GC&MED, or designee, pursuant to § 124.1024. A final Agency decision (whether by the AA/SDBCE, or designee, without an appeal, or by the DADA/GC&MED, or designee, on appeal) finding the protested concern to be an SDB remains in effect for three years from the date of the decision under the same conditions as if the concern had been granted SDB certification under § 124.1008.

**§ 124.1024 Appeals of disadvantaged status determinations.**

(a) *Who may appeal.* Appeals of protest determinations may be filed with the SBA's DADA/GC&MED by the protested concern, the protestor, or the contracting officer.

(b) *Timeliness of appeal.* An appeal must be in writing and must be received by the DADA/GC&MED no later than 5 working days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day time period.

(c) *Notice of appeal.* Notice of the appeal must be provided by the party bringing an appeal to the procuring activity contracting officer and either the protested concern or original protestor, as appropriate.

(d) *Grounds for appeal.* SBA will reexamine a protest determination only if there was a clear and significant error in the processing of the protest, or if the AA/SDBCE, or designee, failed to consider a significant material fact contained within the information supplied by the protestor or the protested concern. SBA will not consider protest determination appeals based on additional information or changed circumstances which were not disclosed at the time of the decision of the AA/SDBCE or designee, or which are based on disagreement with the findings and conclusions contained in the determination.

(e) *Contents of appeal.* No specific format is required for the appeal. However, the appeal must identify the protest determination which is appealed, and set forth a full and specific statement as to why the determination is erroneous under paragraph (c) of this section.

(f) *Completion of appeal after award.* An appeal may proceed to completion even though an award of the SDB acquisition or other procurement requirement which prompted the protest has been made, if so desired by the protested concern, or where SBA determines that a decision on appeal would have a material impact on contracting decisions, such as where the contracting officer agrees:

(1) In the case where an award is made to a concern other than the protested concern, to terminate the contract and award to the protested concern if the appeal finds that the protested concern is disadvantaged; or

(2) In the case where an award is made to the protested concern, to terminate the contract if the appeal finds that the protested concern is not disadvantaged.

(g) The appeal will be decided by the DADA/GC&MED, within 5 working days of its receipt, if practicable.

(h) The appeal decision will be based only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protestor, and the protested concern, consistent with law.

(i) The decision of the DADA/GC&MED, is the final decision of the SBA, and cannot be further appealed to OHA.

Dated: March 6, 1998.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98–17195 Filed 6–26–98; 8:45 am]

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# Part VIII

# Department of the Treasury

## Fiscal Service

**31 CFR Part 356**

**Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93); Final Rule**

**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 356**

## Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (''Treasury'' or ''Department'') is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment includes changes necessary to make fungible stripped interest components for Treasury inflation-indexed securities, which the Department began issuing in January 1997. In addition, the amendment makes certain technical clarifications and conforming changes.

**EFFECTIVE DATE:** March 31, 1999.

**ADDRESSES:** This final rule is available for downloading from the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C., 20220. Persons wishing to visit the library should call (202) 622–0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Kerry Lanham (Acting Director), Chuck Andreatta or Kurt Eidemiller (Government Securities Specialists), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Uniform Offering Circular (31 CFR Part 356) sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The Uniform Offering Circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[1]

In January 1997, the Department began issuing a new type of marketable security, referred to as a Treasury inflation-indexed security, whose principal value is adjusted for inflation as measured by the Bureau of Labor Statistics of the U.S. Department of Labor.[2] The Department believes the issuance of these new securities will reduce interest costs to the Treasury over the long term and broaden the types of debt instruments available to investors in U.S. financial markets.

Treasury inflation-indexed securities have been eligible for the STRIPS (Separate Trading of Registered Interest and Principal of Securities) program since Treasury began issuing the new securities. STRIPS is the Department's program under which eligible securities are authorized to be separated into principal and interest components (interest components are also referred to as ''TINTS''). Such components are maintained in book-entry accounts, and transferred separately in the Treasury/Reserve Automated Debt Entry System (''TRADES'' or the commercial book-entry system). Unlike TINTS from Treasury fixed-principal securities, TINTS stripped from an inflation-indexed security are currently not fungible (i.e., they are not interchangeable) with TINTS stripped from a different inflation-indexed security, even if the components have the same maturity (payment) date.[3]

In the preamble to the final rule amendments to accommodate the issuance of inflation-indexed securities, the Department stated that it would ''continue to work on making interest components fungible in a manner that is operationally feasible.''[4] The Department recognizes that making stripped inflation-indexed interest components fungible is important to developing a liquid market for these components. The Department has worked with market participants to develop a methodology that will accomplish this goal.

The Department published for public comment a proposed amendment to the Uniform Offering Circular on December 8, 1997,[5] which laid out the proposed methodology for making TINTS stripped from different Treasury inflation-indexed securities fungible. The closing date for comments was February 6, 1998. As explained in more detail below, after considering the comments provided, Treasury has decided to adopt the proposed methodology for making TINTS stripped from different inflation-indexed securities fungible. This methodology will remain unchanged from its description in the proposed rule. However, in order to provide market participants sufficient time to make any necessary automated systems changes, the effective date of this final rule will be delayed until March 31, 1999.

### II. Comments Received in Response to the Proposed Rule

The Department received one comment letter on the proposed rule, which was from The Bond Market Association (''Association'').[6] In developing the final rule, the Department took the issues raised in this comment letter into consideration, as well as input received during discussions with various active Treasury securities market participants.

The Association generally supported the Department's efforts to make TINTS of inflation-indexed securities fungible. The Association, however, cited its members' concern with ''the significant modifications needed for their operational systems to accommodate the trading and maintenance of the adjusted value of stripped interest components to the penny.'' The Association said its members believe ''that it will require approximately six to nine months to both make and test the appropriate system changes before they can begin trading the new stripped securities.'' Association members, the commenter said, also expressed concerns that these system changes could complicate efforts already underway to make operational system adjustments to prepare for the year 2000, the European Monetary Unit and the General Collateral Finance Repo product of the Government Securities Clearing Corporation. Similar concerns were expressed to the Department in discussions with various active Treasury market participants. The Association suggested that Treasury consider truncating the pennies from the adjusted values, so that the adjusted values would be maintained in accounts and transferred in whole dollars.

The Association supported establishing a conversion factor between securities issued under different CPI base reference periods if the Consumer Price Index's base reference period is changed. Such a factor would enable TINTS from inflation-indexed securities issued during different CPI base

[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

[2] 62 FR 846 (January 6, 1997).

[3] See 31 CFR 356.31(f).

[4] 62 FR 846, 848 (January 6, 1997).

[5] 62 FR 64528 (December 8, 1997).

[6] See letter from Ms. Paula H. Simpkins, Vice President and Assistant General Counsel, The Bond Market Association (dated February 6, 1998). This letter is available to the public for inspection and downloading on the Internet, at the address provided earlier in this rule, and for inspection and copying at the Treasury Department Library, at the address provided earlier.

reference periods to be fungible. However, the Association recommended that the conversion be done on a voluntary basis so investors could decide whether the benefits outweigh the associated costs of conversion. The Association also recommended the creation of an additional conversion factor that would allow TINTS of inflation-indexed securities issued during a more-recent base period to be converted to an older base period. This additional convertibility, the commenter asserted, would further increase the marketability of the TINTS.

After taking the comments and views received into consideration, the Department is issuing a final rule that adopts the proposed rule without any significant changes. The suggestion to truncate the pennies from the calculation of adjusted values was not adopted because of the resulting payment differences to holders of inflation-indexed TINTS as compared with holders of unstripped inflation-indexed securities, particularly for smaller holders. However, in order to provide market participants with sufficient time to make any automated systems changes necessary for maintaining accounts and transferring adjusted values in pennies, Treasury has decided to adopt the recommendation of The Bond Market Association to delay the effective date. Accordingly, the effective date of this final rule will be delayed until March 31, 1999. In delaying the effective date, the Department recognizes the significant efforts of market participants in making systems changes for the year 2000 and the European Monetary Unit.

No changes are being proposed at this time to the current STRIPS program for fixed-principal securities. However, as stated in the preamble to the proposed rule, the Department will consider at a later date the desirability of making changes to the minimum and multiple requirements for fixed-principal TINTS similar to the requirements for inflation-indexed TINTS, i.e., discontinuing the $1,000 minimum-to-hold and multiple requirement, and permitting fixed-principal TINTS to be held in amounts to the penny.

The suggestions to make conversions of adjusted values from less-recent CPI base reference periods to more-recent base reference periods voluntary, and to create an additional conversion factor to facilitate conversions of adjusted values from more-recent periods to less-recent periods, were also not adopted. The Department believes that these suggestions, had they been adopted, would have been operationally very complicated. They also would have continued to make inflation-indexed TINTS not fungible to the extent that, in either case, there would have to be different CUSIP numbers for TINTS that have the same maturity (payment) date. The rule has been amended, therefore, so that in the event that the CPI is rebased, conversion to the most-recent base reference period will be mandatory. At such time, Treasury will publish information specifying the manner in which this conversion will be accomplished. In addition, any new TINTS created from a security that was issued during a prior base reference period will be issued with adjusted values calculated using reference CPIs under the most-recent base reference period.

The only other change in the final rule from the proposed rule is to provide for mandatory conversion to fungible TINTS of any TINTS created prior to March 31, 1999.[7] Treasury stated in the preamble to the proposed rule that this conversion would occur because of the Department's goal, where possible, to make all TINTS from inflation-indexed securities fungible.[8] Also as stated in the preamble to the proposed rule, Treasury will provide public notice, if necessary, informing participants of the effective conversion date, along with detailed instructions regarding the conversion to fungible STRIPS.

## III. Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866. Although this rule was issued initially in proposed form to secure the benefit of public comment, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this final rule and, therefore, the Paperwork Reduction Act does not apply. The collections of information in 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

### List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is amended as follows:

## PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by adding in alphabetical order the definition of ''Adjusted value'' to read as follows:

### § 356.2 Definitions.

* * * * *

*Adjusted value* means, for an interest component stripped from an inflation-indexed security, an amount derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). (See Appendix B, Section IV to this part, for an example of how to calculate the adjusted value for interest components stripped from an inflation-indexed security.)

* * * * *

3. Section 356.31 is revised to read as follows:

### § 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement as eligible for the STRIPS program. At the option of the holder, and generally at any time from its issue date until its call or maturity, any such security may be ''stripped,'' i.e., divided into separate principal and interest components. A short or long first interest payment and all interest payments within a callable period are not eligible to be stripped from the principal component. The CUSIP numbers and payment dates for the principal and interest components are provided in the offering announcement if not previously announced.

(b) *Treasury fixed-principal securities*—(1) *Minimum par amounts*

[7] As of May 31, 1998, none of the currently outstanding inflation-indexed securities has been stripped.

[8] 62 FR 64528, 64530 (December 8, 1997).

*required for STRIPS.* For a fixed-principal security to be stripped into the components described above, the par amount of the security must be in an amount that, based on its interest rate, will produce a semiannual interest payment in a multiple of $1,000. Exhibit C to this part provides the minimum par amounts required to strip a fixed-principal security at various interest rates, as well as the corresponding interest payments. Amounts greater than the minimum par amount must be in multiples of that amount. The minimum par amount required to strip a particular security will be provided in the press release announcing the auction results.

(2) *Principal components.* Principal components stripped from fixed-principal securities are maintained in accounts, and transferred, at their par amount. The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from fixed-principal securities are maintained in accounts, and transferred, at their original payment value, which is derived by applying the semiannual interest rate to the par amount. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component.

(c) *Treasury inflation-indexed securities*—(1) *Minimum par amounts required for STRIPS.* The minimum par amount of an inflation-indexed security that may be stripped into the components described in paragraph (a) of this section is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

(2) *Principal components.* Principal components stripped from inflation-indexed securities are maintained in accounts, and transferred, at their par amount. At maturity, the holder will receive the inflation-adjusted principal value or the par amount, whichever is greater. (See § 356.30.) The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from inflation-indexed securities are maintained in accounts, and transferred, at their adjusted value, which is derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). See Appendix B, Section IV to this part, for an example of how to calculate an adjusted value. The payment value of any interest component created prior to March 31, 1999, will be converted to its adjusted value. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. The CUSIP number of any interest component created prior to March 31, 1999, will be converted to the fungible CUSIP number for the same maturity date. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component. At maturity, the payment to the holder will be derived by multiplying the adjusted value of the interest component by the Reference CPI of the maturity date, divided by 100. See Appendix B, Section IV to this part, for an example of how to calculate an actual payment amount from an adjusted value.

(4) *Rebasing of the CPI.* In the event that the CPI is rebased, the adjusted values of all outstanding inflation-indexed interest components will be converted to adjusted values based on the new base reference period. At such time, Treasury will publish information specifying the manner in which this conversion will be accomplished. Subsequent to rebasing, any TINTS created from a security that was issued during a prior base reference period will be issued with adjusted values calculated using reference CPIs under the most-recent base reference period.

(d) *Reconstituting a security.* Stripped interest and principal components may be reconstituted, i.e., restored to their fully-constituted form. A principal component and all related unmatured interest components, in the appropriate minimum or multiple amounts or adjusted values, must be submitted together for reconstitution. Interest components stripped from inflation-indexed securities are different from interest components stripped from fixed-principal securities and, accordingly, are not interchangeable for reconstitution purposes.

(e) *Applicable regulations.* Unless otherwise provided in this part, notes and bonds stripped into their STRIPS components are governed by Subparts A, B, and D of Part 357 of this chapter.

4. Appendix B to Part 356 is amended by revising the list of section headings at the beginning of the Appendix to read as follows:

**Appendix B to Part 356—Formulas and Tables**

I. Computation of Interest on Treasury Bonds and Notes.
II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.
III. Formulas for Conversion of Inflation-Indexed Security Yields to Equivalent Prices.
IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Indexed Interest Components.
V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

* * * * *

5. Appendix B to Part 356 is amended by redesignating Section IV as Section V and adding a new Section IV to read as follows:

* * * * *

**IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Indexed Interest Components**

**Note:** Valuing an interest component stripped from an inflation-indexed security at its adjusted value enables this interest component to be interchangeable (fungible) with other interest components that have the same maturity date, regardless of the underlying inflation-indexed security from which the interest components were stripped. The adjusted value provides for fungibility of these various interest components when buying, selling, or transferring them, or when reconstituting an inflation-indexed security.

**Definitions**

C=the regular annual interest rate, payable semiannually, e.g., .03625 (the decimal equivalent of a 3–5/8% interest rate)
Par=par amount of the security to be stripped
Ref $CPI_{Issue\ Date}$=reference CPI for the original issue date (or dated date, when the dated date is different from the original issue date) of the underlying (unstripped) security
Ref $CPI_{Date}$=reference CPI for the maturity date of the interest component
AV=adjusted value of the interest component
PA=payment amount at maturity by Treasury

**Formulas**

AV=Par (C/2)(100/Ref $CPI_{Issue\ Date}$) (rounded to 2 decimals with no intermediate rounding)
PA=AV (Ref $CPI_{Date}$/100) (rounded to 2 decimals with no intermediate rounding)

Example. A 10-year inflation-indexed note paying 3½% interest is issued on January 15, 1999, with the second interest payment on January 15, 2000. The Ref CPI on January 15, 1999 (Ref $CPI_{Issue\ Date}$) is 174.62783, and the Ref CPI on January 15, 2000 (Ref $CPI_{Date}$) is

179.86159. Calculate the adjusted value and the payment amount at maturity of the interest component.

**Definitions**

C=.035
Par=$1,000,000
Ref $CPI_{Issue\ Date}$=174.62783
Ref $CPI_{Date}$=179.86159

**Resolution**

For a par amount of $1 million, the adjusted value of each stripped interest component is $1,000,000 (.035/2)(100/174.62783), or $10,021.31 (no intermediate rounding).

For an interest component maturing on January 15, 2000, the payment amount is $10,021.31 (179.86159/100), or $18,024.49 (no intermediate rounding).

* * * * *

6. Exhibit C to Part 356 is amended by revising the heading to read as follows:

**Exhibit C to Part 356—Minimum Par Amounts for Fixed-Principal STRIPS**

* * * * *

Dated: June 26, 1998.

**Donald V. Hammond,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 98–17525 Filed 6–29–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JUNE 30, 1998

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

**H.R. 1847/P.L. 105–184**
Telemarketing Fraud Prevention Act of 1998 (June 23, 1998; 112 Stat. 520)

**S. 1150/P.L. 105–185**
Agricultural Research, Extension, and Education Reform Act of 1998 (June 23, 1998; 112 Stat. 523)

**S. 1900/P.L. 105–186**
U.S. Holocaust Assets Commission Act of 1998 (June 23, 1998; 112 Stat. 611)

**H.R. 3811/P.L. 105–187**
Deadbeat Parents Punishment Act of 1998 (June 24, 1998; 112 Stat. 618)

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