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# Rules and Regulations

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 581

### Processing Garnishment Orders for Child Support and/or Alimony

**AGENCY:** Office of Personnel Management.
**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations concerning the processing of garnishment orders for child support and/or alimony. The amendments significantly broaden the conditions under which compensation received from the Department of Veterans Affairs will be subject to garnishment. The amendments also clarify the status for purposes of garnishment of Supplemental Security Income (SSI) benefits paid by the Social Security Administration. OPM is also making additional technical changes.

**DATES:** These amendments will become effective on September 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Murray M. Meeker (202) 606–1980, or FTS 266–1980.

**SUPPLEMENTARY INFORMATION:** On September 14, 1990, OPM published a notice of proposed rulemaking (55 FR 37881). As explained in that notice, on December 19, 1989, the Office of Legal Counsel (OLC) of the Department of Justice, issued an opinion concerning compensation received from the Department of Veterans Affairs (VA). The OLC's opinion concluded that OPM's regulations were too narrow concerning the garnishment of VA compensation. This amendment, consistent with the OLC opinion, significantly broadens the circumstances in which VA compensation will be subject to garnishment. The September 14, 1990, notice also proposed an amendment to clarify the fact that Supplemental Security Income (SSI) benefits under the Social Security Act are not remuneration for employment and, therefore, are not subject to garnishment. OPM previously had been advised by the Department of Health and Human Services and the Center on Children and the Law of the American Bar Association that a State court in Tennessee had held that SSI benefits were subject to garnishment, which OPM believed was in error.

OPM received three comments. The Director of a State agency in New Jersey wrote in support of both proposals. The Managing Attorney of a legal service office in Tennessee submitted a written comment which expressed agreement with the proposed amendment concerning SSI benefits and subsequently notified us that the Supreme Court of Tennessee had issued a unanimous opinion in which the Tennessee Supreme Court expressly referred to OPM's proposed clarifying regulation, noted the conflict between the lower Tennessee court decision and contrary decisions issued in Wisconsin and New York, and concluded that SSI benefits are not remuneration for employment and thus not subject to garnishment under Federal law. *Tennessee Department of Human Services, ex. rel.* v. *Young*, 802 S.W.2d 594 (Tenn. Sup. Ct. 1990).

While several individuals, including both State and Federal officials, orally requested information concerning the status of the proposed amendment regarding garnishment of VA compensation, only one of these individuals actually commented concerning the proposal, explaining that the proposed amendment was inconsistent because it applied to obligors "in receipt of" military retired pay who had "totally waived" their military retired pay. In response to this comment, we have amended 5 CFR 581.103(c)(6)(iv), the regulatory provision concerning the garnishment of VA benefits, in an effort to avoid any confusion that otherwise might occur if there were reference to a total waiver and to the provision that the obligor be in receipt of military retired pay.

The Department of Veterans Affairs and several individuals have requested that OPM expedite the publication of this notice of final rulemaking. OPM, therefore, has determined that it will not revise the list of designated agents in Appendix A at this time.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

**List of Subjects in 5 CFR Part 581**

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.
**Constance Berry Newman,**
*Director.*

Accordingly, OPM is amending 5 CFR part 581 as follows:

## PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for part 581 continues to read as follows:

**Authority:** 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; 5 U.S.C. 8437; E.O. 12105.

2. In § 581.103 paragraphs (c) and (c)(6) introductory text and paragraph (c)(6)(iv) are revised to read as follows:

**§ 581.103 Moneys which are subject to garnishment.**

* * * * *

(c) For obligors generally:

* * * * *

(6) *Exceptions.* Remuneration would not include:

* * * * *

(iv) Any payment by the Department of Veterans Affairs as compensation for a service-connected disability or death, except any compensation paid by the Department of Veterans Affairs to a former member of the Armed Forces where the former member has waived either the entire amount or a portion of his/her retired/retainer pay in order to receive such compensation. In this case, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired/retainer pay is subject to garnishment.

3. Section 581.104 is amended by revising paragraphs (h); introductory

text, (h)(3) and (i) and by adding paragraphs (j) and (k) to read as follows:

**§ 581.104 Moneys which are not subject to garnishment.**

* * * * *

(h) Reimbursement for expenses incurred by an individual in connection with his/her employment, or allowances in lieu thereof, and other payments and allowances, including, but not limited to:

* * * * *

(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.

* * * * *

(i) Moneys due a deceased employee obligor where the amounts are reimbursement for expenses incurred by the deceased employee in connection with his/her employment, or allowances in lieu thereof, including:

(1) Per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith;

(2) Allowances on change of official station;

(3) Quarters allowances; and

(4) Cost-of-living allowances (COLA), when applicable as a result of the deceased employee obligor's having been in a foreign area or stationed outside of the continental United States or in Alaska.

(j) Amounts due for payment of cash awards for employees' suggestions.

(k) Supplemental Security Income (SSI) payments made pursuant to sections 1381 et seq., of title 42 of the United States Code (title XVI of the Social Security Act).

[FR Doc. 91-18247 Filed 7-31-91; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 318 and 354

**[Docket No. 91-113]**

### User Fees—Hawaii and Puerto Rico; Postponement of Effective Date

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

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

**SUMMARY:** We are postponing until October 1, 1991, the effective date for the final rule published on April 23, 1991 (56 FR 18496–18502, Docket Number 91–054) which was previously scheduled to become effective on August 1, 1991. The rule established user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights.

**EFFECTIVE DATE:** Effective July 30, 1991, APHIS is postponing the effective date of the final rule published on April 23, 1991, (56 FR 18496–18502, Docket Number 91–054) until October 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, Federal Building, room 635, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 23, 1991 (56 FR 18496–18502, Docket Number 91–054), we published a final rule under authority of 31 U.S.C. 9701 establishing user fees for agricultural quarantine and inspection (AQI) services provided in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. None of the fees collected can be credited directly to the Animal and Plant Health Inspection Service (APHIS) but must be deposited in the general fund of the U.S. Treasury. The rule was scheduled to become effective August 1, 1991.

We have determined that affected parties require additional time to address fee implementation concerns. Therefore, we are postponing the August 1 effective date until October 1, 1991.

Accordingly, the effective date for the amendments to 7 CFR parts 318 and 354, published at 56 FR 18496–18502 on April 23, 1991, which were scheduled to become effective on August 1, 1991, is postponed until October 1, 1991.

**Authority for Part 318:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

**Authority for Part 354:** 7 U.S.C. 2260, 21 U.S.C. 136 and 136a, 31 U.S.C. 9701, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 30th day of July 1991.

**Robert Melland,**

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

[FR Doc. 91-18396 Filed 7-30-91; 2:13 pm]

BILLING CODE 3410-34-M

## Federal Crop Insurance Corporation

### 7 CFR Part 401

**[Amendment No. 65; Doc. No. 8291S]**

### General Crop Insurance Regulations; Soybean Endorsement

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on December 11, 1990, at 55 FR 50812. The interim rule amended the Soybean Endorsement (7 CFR 401.117) to provide conditions for the retention of premium reduction based on good insuring experience. The intended effect of this rule is to restore provisions to the Soybean Endorsement that set out conditions to be met by eligible insureds for the retention of premium discount earned through good insuring experience.

**DATES:** This final rule is effective on August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established is October 1, 1992.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On November 21, 1989, FCIC published a final rule at 54 FR 48071 amending the Soybean crop insurance policy with respect to: (1) Allowing a discount to those who elected not to divide their insured acreage into optional units; and (2) removing restrictions in existing unit division language to standardize the unit structure for soybeans. In this rule, a portion of section 3 of the policy dealing with criteria for premium reduction eligibility was inadvertently omitted. In order to restore the missing criteria which were mistakenly removed in the rule published at 54 FR 48071, FCIC published an interim general rule in the **Federal Register** on December 11, 1990, at 55 FR 50812, to provide the conditions to be met by eligible insureds for retaining the premium discount for good insuring experience. This action does not detract from the benefit of premium discount; merely adding those missing requirements necessary to receive such benefit.

Written comments were solicited for 60 days after publication in the **Federal Register** and the rule was scheduled for review so that any amendment made necessary by public comments be published as soon as possible.

No comments were received, therefore, the interim rule published at 55 FR 50812 is hereby adopted without change in this final rule.

**List of Subjects in 7 CFR Part 401**

Crop insurance, Soybeans.

**Final Rule**

Accordingly, the interim rule published in the **Federal Register** on December 11, 1990 at 55 FR 50812, is hereby adopted as a final rule without change.

**Authority:** 7 U.S.C. 1506, 1516.

Done in Washington, DC, on June 10, 1991.

**James E. Cason,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 91-18170 Filed 7-31-91; 8:45 am]

**BILLING CODE 3410-08-M**

## INTERNATIONAL TRADE COMMISSION

### 19 CFR Part 200

### Employee Responsibilities and Conduct

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending its regulation regarding the review of financial disclosure reports filed by Commissioners. 19 CFR 200.735-103(c)(2). The change is being made pursuant to 5 CFR 2638.103 and 2638.201.

The amendment permits the Commission's Designated Agency Ethics Official (DAEO) to review financial disclosure reports filed by all Commissioners. Currently, financial disclosure reports filed by Commissioners are reviewed by the Chairman and reports filed by the Chairman are reviewed by the Vice Chairman.

Part 200 of the Commission regulations will also be amended to use the term Designated Agency Ethics Official (DAEO) in place of Ethics Counselor and Deputy DAEO in place of Deputy Ethics Counselor.

**EFFECTIVE DATES:** This rule is effective June 20, 1991, and applies to all financial disclosure reports filed by Commissioners for calendar year 1990 or any part thereof.

**ADDRESSES:** Kenneth R. Mason, Secretary, U.S. International Trade Commission. 500 E Street, SW., room 112, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Deputy Agency Ethics Official, Office of the General Counsel, telephone 202-252-1088, FAX 202-252-1111. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**SUPPLEMENTARY INFORMATION:** The International Trade Commission is revising the procedure used for review of financial disclosure reports filed by Commissioners. Under the current rule (19 CFR 200.735-103(c)(2)), the Chairman of the Commission reviews financial disclosure reports filed by Commissioners. The Vice Chairman reviews the Chairman's report. The change will allow the Commission's Designated Agency Ethics Official (DAEO) to review financial disclosure reports filed by all Commissioners.

This amendment is desirable because it will bring the Commission's review process into conformity with most other agencies. In addition, the amendment avoids the difficulties presented when there is no Chairman and the Vice Chairman is serving as the Acting Chairman. In those instances, a waiver of § 200.735-103(c)(2) of the Commission's rules is necessary allowing the DAEO to review the Vice Chairman's report. It is deemed inappropriate for the Vice Chairman to review his/her own financial disclosure report.

The Commission is also revising part 200 to use the term Designated Agency Ethics Official (DAEO) in place of Ethics Counselor and Deputy DAEO instead of Deputy Ethics Counselor. The term DAEO is the official title of the head of the ethics program in each agency and it is the term used in the ethics rules issued by the Office of Government Ethics. Use of that term in the rule will bring it into conformity with most other agencies.

Under the Ethics in Government Act of 1978, as amended, the Director of the Office of Government Ethics administers the statute requiring certain federal personnel to file public financial disclosure reports. 5 U.S.C. App. 111. Under that authority OGE has issued government-wide regulations that permit each agency to issue their own ethics regulations. The agency regulations must generally conform to the model regulations issued by OGE, and they must be approved by OGE. These rule changes are being issued under that authority; the changes have been approved by OGE. 5 CFR 2638.103 and 5 CFR 2638.201.

**Administrative Procedure Act**

The Commission has determined that this regulation concerns matters solely of Federal agency organization and procedure. Thus, it is exempt from the notice, opportunity for public comment, and delayed effective date requirements of the Administrative Procedure Act. 5 U.S.C. 553.

**Executive Order 12291**

The Commission has concluded that this is not a major rule as defined in section 1(b) of Executive Order 12291, Federal Regulation. Since the amendment is not a change in a major

rule, the further requirements of the Order do not apply.

**Regulatory Flexibility Act**

The Commission certifies that this change in regulation will not have a significant economic impact on a substantial number of small business entities since the change involves merely an adjustment in Commission procedure. 5 U.S.C. 605(b).

## PART 200—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 200 is revised to read as follows:

**Authority:** E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 et seq., 5 CFR 2638.101 et seq., unless otherwise noted.

**§ 200.735–102 [Amended]**

2. Section 200.735–102 is amended by removing paragraph (g).

3. In § 200.735–103 paragraph (a) is amended by revising the first and third sentences to read as follows:

**§ 200.735–103 Counseling Service**

(a) The Chairman shall appoint a Designated Agency Ethics Official (DAEO) who serves as liaison to the Office of Government Ethics and who is responsible for carrying out the Commission's ethics program.

* * * * *

The DAEO will be a senior Commission employee with experience demonstrating the ability to review financial disclosure reports and counsel employees with regard to resolving conflicts of interest, review the financial disclosures of Presidential nominees to the Commission prior to confirmation hearings, counsel employees with regard to ethics standards, assist supervisors in implementing the Commission's ethics program, and periodically evaluate the ethics program.

* * * * *

**§ 200.735–103 [Amended]**

4. Section 200.735–103(b) is revised to read as follows:

* * * * *

(b) The Chairman shall select an Alternate Agency Ethics Official who will serve as Deputy DAEO to whom any of the DAEO's statutory and regulatory duties may be delegated.

* * * * *

5. In 200.735–103(c) introductory text change the terms "Ethics Counselor" and "Counselor's" where it appears to "DAEO," and revise paragraph (c)(2) to read as follows:

* * * * *

(c) * * *

(2) Review of financial disclosure reports, including reports filed by Presidential nominees to the Commission;

* * * * *

**§ 200.735–114 [Amended]**
**§ 200.735–115 [Amended]**
**§ 200.735–121 [Amended]**

6. Sections 200.735–114, 200.735–115, and 200.735–121 are amended to change the term "Deputy Counselor," where it appears, to "Deputy DAEO."

**§ 200.735–116 [Amended]**

7. Section 200.735–116(b) is revised to read as follows:

* * * * *

(b) Each such statement shall be submitted to the Office of the General Counsel of the Commission and shall be marked "Submitted in Confidence to the Deputy DAEO.": *Provided,* That the statement of the Deputy DAEO shall be submitted directly to the DAEO.

By order of the Commission.

Issued: July 18, 1991.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 91–18122 Filed 7–31–91; 8:45 am]

BILLING CODE 7020–02–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1301

### Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Final rule.

**SUMMARY:** The DEA is amending its regulations by revising the definition of "detoxification" to bring it into conformity with the current statutory definition for this term found under the Controlled Substances Act (21 U.S.C. 801 et seq.). The Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984 (Pub. L. 98–509) revised the definition of "detoxification treatment" as it applies to the treatment of heroin addiction. The amendment extends from 21 days to 180 days the maximum period a patient may participate in a detoxification program.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

**SUPPLEMENTARY INFORMATION:** The final rule amends the regulations that accompany the Controlled Substances Act (21 U.S.C. 801 *et seq.*), which was revised by the Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984. The rule provides standards for long-term detoxification as mandated by Public Law 98–509, which revised the statutory definition for detoxification treatment from 21 days to 180 days. The revision permits short-term detoxification for 30 days and long-term detoxification for up to 180 days. In a **Federal Register** notice published on March 2, 1989 (54 FR 8954), the Food and Drug Administration amended its definition to bring it into conformity with the new statutory definition. The DEA published a notice in the **Federal Register** on February 1, 1991 (56 FR 3987), proposing to amend the definition of detoxification. There were no comments received in response to that notice.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this final rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 21 CFR Part 1301**

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

For reasons set out above, 21 CFR part 1301 is amended as follows:

## PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

**Authority:** 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.02, paragraph (e) is revised to read as follows:

**§ 1301.02 Definitions.**

* * * * *

(e) The term *detoxification treatment* means the dispensing, for a period of time as specified below, of a narcotic drug or narcotic drugs in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time. There are two types of detoxification treatment: Short-term detoxification treatment and long-term detoxification treatment.

(1) *Short-term detoxification treatment* is for a period not in excess of 30 days.

(2) *Long-term detoxification treatment* is for a period more than 30 days but not in excess of 180 days.

* * * * *

Dated: July 3, 1991.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 91-18167 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-09-M

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**21 CFR Part 1301**

## Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

**AGENCY:** Drug Enforcement Administration (DEA); Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies the existing language found in 21 CFR 1301.76(a) regarding the employment by any registrant of any person who has had an application for registration denied, or has had a registration revoked, at any time. This final rule extends that prohibition to any person who has been convicted of a felony relating to controlled substances or who has surrendered a registration as a consequence of a controlled substance investigation.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking was published in the **Federal Register** on February 4, 1991 (56 FR 4182) to modify 21 CFR 1301.76(a) by adding additional grounds which would prohibit a registrant from hiring an individual for a position which would require access to controlled substances. The additional conditions which would preclude employment cited were the conviction of a felony relating to controlled substances, or the surrender of a registration as a consequence of controlled substance investigation. The proposed rulemaking provided an opportunity for interested parties to comment in writing on or before April 5, 1991.

A total of seven comments were received regarding this proposal. One strongly supported the proposed rule, and encouraged that it be expanded to include the exclusion of anyone convicted of a drug related misdemeanor from a position which would require access to controlled substances. The basis for this recommendation is that a person convicted of a drug related misdemeanor has demonstrated that he or she should not be entrusted with access to controlled substances. The commenter's point is well taken. Application of this regulation should not hinge on a quirk of law under which a particular crime may be a felony in one state and a misdemeanor in another. However, since the Notice of Proposed Rulemaking mentioned only felonies, expanding its scope would cause undue delay of this final rule. Therefore, DEA is reviewing this comment for consideration as a future proposal.

It should be noted that the existing regulation, as well as the proposed amendment, is intended to prevent a DEA registrant from hiring, as an agent or employee, an individual who would probably be denied a DEA registration if he or she applied for his or her own registration as a practitioner or applied on behalf of a pharmacy owned or principally operated by the individual. To hire such a person, the registrant must obtain a waiver under circumstances which clearly show that the registrant has been fully informed about the proposed employee's past experience with controlled substances and that the registrant intends to take adequate measures to ensure that no increased risk of diversion is occasioned by the proposed employment.

The decision not to include persons convicted of misdemeanors should not create a loophole through which many individuals will attempt to evade coverage by the regulation. 21 U.S.C. 823(f) and 824(a)(4) authorize the DEA to revoke or deny a registration upon a finding that such registration would be inconsistent with the public interest. One factor in ascertaining whether a registration is in the public interest is the registrant's or applicant's past conviction record under Federal or State laws regarding the manufacture, distribution or dispensing of controlled substances. The statutory sections cited above do not differentiate between felonies and misdemeanors. Furthermore, the statute permits DEA to revoke or deny a registration based upon the underlying conduct which led to the criminal charges, without respect to conviction. Hence, any registrant who has been convicted of a drug related crime, or whose conduct has led to consideration of criminal charges, is likely to have had a registration revoked, an application denied or surrendered a registration for cause.

The remaining six comments, which were received from a number of associations and licensing boards representing both the nursing and pharmacy professions, concerned the effect that the proposed rule would have on pharmacists or nurses who were successfully participating in a state sanctioned recovery program from chemical dependency. Most concluded that if such an individual either surrendered a state license to practice while suffering from chemical dependency or had such a license suspended for the same cause, that they would be precluded by this proposed rule from future employment within their profession. On this basis, they opposed the proposal, and recommended that it be amended to contain an exemption for individuals participating in monitored recovery programs. These objections appear to be based on a misinterpretation of the proposal. It would appear from the comments that the term "registration" was interpreted to mean any form of registration or licensure which may be required for an individual nurse or pharmacist to practice in a state or other jurisdiction. In fact, the proposed regulation refers only to individuals who have had a DEA registration denied, revoked, or have surrendered a DEA registration for cause. Since the majority of nurses and pharmacists are not DEA registrants, but rather agents of the DEA registered hospitals, pharmacies, physicians, or other entities by whom or by which they are employed, this argument is moot. In addition, the regulation would have no effect on an individual who voluntarily ceased practice due to retirement, etc. or who temporarily surrendered a state license which participating in a recovery program, since the DEA registration, if any, would not routinely be affected by such an action alone. The wording of the final rule will be modified to clarify this point.

**General Comments**

This amendment will not require any additional paperwork or recordkeeping burden beyond normal business practices and is intended to clarify the present requirements and to extend the prohibition against hiring individuals who had previously had a DEA registration revoked, or had an application for registration denied to individuals who have been convicted of a drug related felony, or who have surrendered a DEA registration for cause.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that the final rule will not have significant impact upon entities whose interest must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The changes will not impose any additional regulatory requirements. They will clarify and extend the conditions which preclude a registrant from hiring certain individuals for positions which require access to controlled substances. The final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12292, this final rule has been submitted for review to the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

**List of Subjects in 21 CFR Part 1301**

Drug Enforcement Administration, Drug traffic control, Registration of manufacturers, distributors, and dispensers of controlled substances.

For reasons set out above, 21 CFR part 1301 is amended as follows:

## PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.76 is amended by revising paragraph (a) to read as follows:

**§ 1301.76 Other security controls for practitioners.**

(a) The registrant shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who, at any time, had an application for registration with the DEA denied, had a DEA registration revoked or has surrendered a DEA registration for cause. For purposes of this subsection, the term "for cause" means a surrender in lieu of, or as a consequence of, any federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.

* * * * *

Dated: June 20, 1991.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 91-18168 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-09-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 889

**[Docket No. R-91-1524; FR-2956-C-02]**

**RIN 2502-AF19**

### Supportive Housing for the Elderly, Interim Rule; Correction

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

**ACTION:** Interim rule; Correction.

**SUMMARY:** On June 12, 1991, the Department published an interim rule (56 FR 27104) for Supportive Housing for the Elderly. In previous section 202 NOFAs (*e.g.*, 55 FR 14062, 14065, April 13, 1990), the Department has had a minimum project size limitation in metropolitan areas. In the Invitation for Applications for Section 202 Supportive Housing for the Elderly Fund Reservation for this year (HUD Handbook 4571.3, Supportive Housing for the Elderly, appendix 10; and HUD notice 91-45, appendix 4), a 40-unit minimum project size limitation is stated. The Department failed to place this minimum limitation in the interim rule and is publishing this correction to provide notice of this limitation for FY 1991 applicants. This limitation is also being published in today's **Federal Register** as a correction to the Notice of Funding Availability for Supportive Housing for the Elderly. This limitation is also being publicized by the Field Offices at their workshops and is contained in the application package.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Robert Wilden, Director, Housing for the Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6116, Washington, DC 20410, telephone (202) 708-2730. (This is not a toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (This is not a toll-free number).

**List of Subjects in 24 CFR Part 889**

Aged, Low and moderate income housing, capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, in FR Doc. 91-13635, published in the **Federal Register** on June 12, 1991, at 56 FR 27104, 24 CFR part 889 is amended by correcting § 889.215(a), to read as follows:

## PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

1. The authority citation for 24 CFR part 889 continues to read as follows:

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. On page 27116, in the second column, § 889.215(a) is corrected to read as follows:

**§ 889.215 Limits on number of units.**

(a) No organization shall participate as Sponsor or Co-sponsor in the filing of an application or applications for a reservation of section 202 funds under this subpart in a single region in a single fiscal year in excess of that necessary to finance the construction or rehabilitation of a structure or portion of a structure, or acquisition from the Resolution Trust Corporation of 300 units of housing and related facilities. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities. The Secretary may also by notice in the **Federal Register** set the minimum size of a single project.

* * * * *

Dated: July 25, 1991.

**Grady J. Norris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 91-18291 Filed 7-31-91; 8:45 am]

BILLING CODE 4210-27-M

## POSTAL SERVICE

### 39 CFR Part 111

### Nonmailability of Deceptive Solicitations

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending its regulations on solicitations deceptively implying Federal connection, approval, or endorsement. The purpose of the amendment is merely to reflect that, as provided by recent legislation, the mailing of any solicitation not satisfying the regulations' requirements constitutes *prima facie* evidence that the anti-false-representations provisions of 39 U.S.C. 3005 have been violated.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. John F. Ventresco, (202) 268–3085.

**SUPPLEMENTARY INFORMATION:** On May 8, 1991, the Postal Service adopted regulations (56 FR 21304, as corrected at 56 FR 23736) implementing the Deceptive Mailings Prevention Act of 1990 (Public Law No. 101–524, November 6, 1990). The Act added new subsections to section 3001 of title 39, United States Code. These subsections deal with any solicitation by a nongovernmental entity containing terms or symbols that reasonably could be interpreted or construed as implying a Federal Government connection, approval, or endorsement.

If the soliciting entity does not have such connection, approval, or endorsement, the solicitation is nonmailable unless it: (1) Is contained in a publication the addressee has ordered, and is not on behalf of the publisher; or (2) displays prescribed disclaimers, both on its envelope or outside cover or wrapper, and on the face of the solicitation itself. Further legislation (Public Law No. 102–71, July 10, 1991) has made the mailing of any such nonmailable solicitation actionable as a false-representation scheme, and *prima facie* evidence to support the Postal Service's issuing the remedial orders authorized by section 3005(a) of title 39, United States Code. Section 123.421 of the implementing regulations is being amended to reflect this legislation.

Accordingly, the Postal Service adopts the following amendment to part 123 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

### List of Subjects in 39 CFR Part 111

Postal Service.

### PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

### PART 123—NONMAILABLE MATTER—WRITTEN, PRINTED, AND GRAPHIC

2. In § 123.421, insert the following sentence after the first sentence: A nonconforming solicitation constitutes *prima facie* evidence of violation of 39 U.S.C. 3005.

A transmittal letter making this change in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 91–18156 Filed 7–31–91; 8:45 am]

BILLING CODE 7710–12–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0 and 64

**[CC Docket No. 90–571; FCC 91–213]**

### Telecommunications Services for Hearing and Speech Disabled

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Part 0 of the rules of the Federal Communications Commission (Commission) governing "Commission Organization", 47 CFR part 0, and subpart F of part 64 titled "Furnishing of Customer Premises Equipment and Related Services Needed by Persons with Impaired Hearing, Speech, Vision or Mobility", 47 CFR 64, are amended as set forth in this Report and Order (R&O). The purpose of the R&O is to implement title IV of the Americans with Disabilities Act of 1990 (ADA) which amends title II of the Communications Act of 1934, as amended, by adding new section 225, amending existing section 711, and conforming sections 2(b) and 221(b). See Public Law 101–336, 104 Stat. 327, 366–69 (July 26, 1990). Title IV mandates that the Commission prescribe regulations to implement section 225 not later than one year after the ADA's enactment date of July 26, 1990, and requires each common carrier providing telephone voice transmission services to provide, throughout the area in which it offers service, telecommunications relay services (TRS) for individuals with hearing or speech disabilities, not later than three years after the ADA's enactment date.

**EFFECTIVE DATE:** September 30, 1991.

**FOR FURTHER INFORMATION CONTACT:** Linda B. Dubroof, (202) 634–1808 (Voice) and (202) 634–1855 (TT).

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's R&O in the matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket 90–571, FCC 91–213 adopted July 11, 1991 and released July 26, 1991. The R&O and supporting file may be examined in the Commission's Public Reference Room, room 239, 1919 M Street, NW., Washington, DC, during business hours or purchased from the duplicating contractor, Downtown Copy Center, 1114 21st, NW., Washington, DC 20036, (202) 452–1422. The R&O also will be published in the FCC Record.

This proceeding was initiated by the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket 90–571, FCC 90–376, 5 FCC Rcd 7187 (1990), [55 FR 50037, December 4, 1990], which proposed amendments to parts 0 and 64 of its rules to implement title IV of the ADA. The ADA provides a clear national mandate for the elimination of discrimination against individuals with disabilities and ensures that the Commission play an active role in enforcing the standards established in title IV. The primary purpose of title IV is to further the Communications Act's goal of universal telecommunications services by ensuring that interstate and intrastate TRS are available nationwide, to the extent possible and in the most efficient manner, to individuals in the United States with hearing or speech disabilities.

In its NPRM, the Commission proposed minimum standards designed to implement the provisions of title IV. Interested parties were invited to offer alternative language, additional provisions, or any other suggestions that might foster the intent of Congress to bring functionally equivalent telecommunications services to individuals with hearing or speech disabilities. After reviewing the sixty-one comments and/or reply comments submitted by interested parties, the Commission has modified some of the proposed rules and fashioned a comprehensive set of rules which (a) set forth terminology and definitions; (b) prescribe operational, technical, and functional minimum standards required

of all TRS providers; and (c) delineate the state certification process. The rules are made a part of this publication.

**Request for Comments on Funding Mechanisms**

The ADA mandates that the Commission prescribe regulations governing the jurisdictional separation of costs, and that costs caused by interstate TRS be recovered from all subscribers for every interstate service and costs caused by intrastate TRS be recovered from the intrastate jurisdiction. The majority of commenters concur that existing accounting and separations rules are adequate to deal with interstate relay services. In order to achieve the goals of the ADA without unnecessarily disrupting TRS as currently provided, the Commission finds that current separations rules are adequate. However, the record is not adequate to determine a specific cost recovery mechanism. Therefore, the Commission seeks specific proposals from interested parties on cost recovery to be submitted to the Common Carrier Bureau no later than 60 days from the release date of this R&O. Responses to these proposals shall be filed not later than 30 days thereafter. All proposals and other comments must reference CC Docket No. 90–571. In particular, parties should address various proposed funding mechanisms and both the advantages and disadvantages of each proposal, including relative administrative costs of various mechanisms, the likely relative costs that would be borne by various interstate carriers under each proposal, and the impact on quality, if any, of the proposals. The Commission notes that in this proceeding some commenters have argued that the costs associated with interstate relay services should be shared. These commenters must make a well reasoned showing that self-funding would be inappropriate. The Commission is also especially interested in learning about different possible funding mechanisms from the experiences of the states.

**Final Regulatory Flexibility Analysis**

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 601, *et seq.*, the Commission's final analysis in this Report and Order is as follows:

*I. Need and Purpose of This Action*

This Report and Order amends the Commission's rules to require that each common carrier engaged in interstate and/or intrastate telephone voice transmission services shall, no later than July 26, 1993, provide telecommunications relay services throughout the area in which it offers service. The rule amendments are required by the Americans with Disabilities Act of 1990, which, *inter alia*, adds section 225 to the communications Act of 1934, as amended, 47 U.S.C. 225. The rules are intended to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to persons in the United States with speech and/or hearing disabilities.

*II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis*

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

*III. Significant Alternatives Considered*

The notice of proposed rulemaking in this proceeding (55 FR 50037, December 4, 1990) offered several proposals and requested comments as well as the views of commenters on other possibilities. The Commission has considered all comments, and has adopted most of its proposals in addition to some alternatives recommended by commenters. The Commission considers its Report and Order to be the most reasonable course of action under the mandate of section 225 of the Communications Act.

**Paperwork Reduction Act Statement**

Average reporting burdens for the collections of information are estimated as follows:

State certification: Respondent burden for complying with the certification requirement is 160 hours per submission. Certification remains in effect for five years; one year prior to expiration of certification, a state may apply for renewal as prescribed in the Commission's rules.

Complaints: Five burden hours to file a complaint.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060–0463), Washington, DC 20554, and also to the Office of Management and Budget, Paperwork Reduction Project (3060–0463), Washington, DC 20503.

**Ordering Clauses**

Accordingly, It is Ordered, That, pursuant to sections 1, 4(i), 4(j), 201–205, 225 and 403 of the Communications Act of 1934, as amended, parts 0 and 64 of the Commission's Rules and Regulations *are amended* as set forth below, effective 60 days after publication in the **Federal Register**.

It is Further Ordered, That specific proposals from interested parties on cost recovery shall be submitted to the Common Carrier Bureau, referencing CC Docket No. 90–571, no later than 60 days from the release date of this Report and Order, and responses to these proposals shall be filed not later than 30 days thereafter.

It is Further Ordered, That authority is delegated to the Chief, Common Carrier Bureau to implement the state certification and complaint process provided in the rules adopted herein, and to review specific proposals on cost recovery mechanisms submitted by interested parties.

It is Further Ordered, That, pursuant to the requirements of section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Secretary shall: (a) Make copies of this Report and Order available to members of the public and (b) shall cause a summary of this Report and Order to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain such copies. The Secretary shall also provide a copy of this Report and Order to each state utility commission.

**List of Subjects**

*47 CFR Part 0*

Organization and functions (Government agencies).

*47 CFR Part 64*

Communications common carriers. Individuals with hearing and speech disabilities, Telecommunications relay services.

**Amended Rules**

Parts 0 and 64 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations, parts 0 and 64) are amended as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 is revised to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.91 is amended by adding new paragraph (m) to read as follows:

**§ 0.91 Functions of the Bureau.**

* * * * *

(m) Acts upon matters involving telecommunications relay services complaints and certification.

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

**Authority:** Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Subpart F of part 64 (consisting of §§ 64.601–64.608) is revised in its entirety to read as follows:

**Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities**

Sec.

64.601 Definitions.
64.602 Jurisdiction.
64.603 Provision of services.
64.604 Mandatory minimum standards.
64.605 State certification.
64.606 Furnishing related customer premises equipment.
64.607 Provision of hearing aid compatible telephones by exchange carriers.
64.608 Enforcement of related customer premises equipment rules.

### Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

**§ 64.601 Definitions.**

As used in this subpart, the following definitions apply:

(1) American Sign Language (ASL): A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(2) ASCII: An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(3) Baudot: A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(4) Common carrier or carrier: Any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(5) Communications assistant (CA): A person who transliterates conversation from text to voice and from voice to text between two end users of TRS. CA supersedes the term "TDD operator."

(6) Hearing carry over (HCO): A reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation.

(7) Telecommunications relay services (TRS): Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

(8) Text telephone (TT): A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TT supersedes the term "TDD" or "telecommunications device for the deaf."

(9) Voice carry over (VCO): A reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation.

**§ 64.602 Jurisdiction.**

Any violation of this subpart by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

**§ 64.603 Provision of services.**

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with these regulations:

(a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.605 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.605 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.605 for such state.

**§ 64.604 Mandatory minimum standards.**

(a) Operational standards.

(1) Communications assistant (CA). TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette.

(2) Confidentiality and conversation content. Consistent with the obligations of common carrier operators, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call. CAs are prohibited from intentionally altering a relayed conversation and must relay all conversation verbatim unless the relay user specifically requests summarization.

(3) Types of calls. Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. CAs shall handle emergency calls in the same manner as they handle any other TRS calls.

(b) Technical standards.

(1) ASCII and Baudot. TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) Speed of answer. TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.

(3) Equal access to interexchange carriers. TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) TRS facilities. TRS shall operate every day, 24 hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TT and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(5) Technology. No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. VCO and HCO technology are required to be standard features of TRS.

(c) Functional standards.

(1) Enforcement. Subject to § 64.603, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(2) Public access to information. Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TT numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of TRS.

(3) Rates. TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(4) Jurisdictional separation of costs.

(i) General. Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) Cost recovery. Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service. Costs caused by intrastate TRS providers shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section.

(5) Complaints.

(i) Referral of complaint. If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Jurisdiction of Commission. After referring a complaint to a state under paragraph (c)(5)(i) of this section, or if a complaint is filed directly with a state, the Commission shall exercise jurisdiction over such complaint only if:

(A) final action under such state program has not been taken within:

(*1*) 180 days after the complaint is filed with such state; or

(*2*) a shorter period as prescribed by the regulations of such state; or

(B) the Commission determines that such state program is no longer qualified for certification under § 64.605.

(iii) Complaint procedures.

(A) Content. A complaint shall be in writing, addressed to the Federal Communications Commission, Common Carrier Bureau, TRS Complaints, Washington, DC 20554, or addressed to the appropriate state office, and shall contain:

(*1*) the name and address of the complainant,

(*2*) the name and address of the defendant against whom the complaint is made,

(*3*) a complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(*4*) the relief sought.

(B) Amended complaints. An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(C) Number of copies. An original and two copies of all pleadings shall be filed.

(D) Service.

(*1*) Except where a complaint is referred to a state pursuant to § 64.604(c)(5)(i), or where a complaint is filed directly with a state, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(*2*) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(E) Answers to complaints and amended complaints. Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(F) Replies to answers or amended answers. Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation

contained in such answer or amended answer.

(G) Defective pleadings. Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

**§ 64.605 State certification.**

(a) State documentation. Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Common Carrier Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the **Federal Register**.

(b) Requirements for certification. After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(1) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(2) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program; and

(3) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(c) Certification period. State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(d) Method of funding. Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e) Suspension or revocation of certification. The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

**§ 64.606 Furnishing related customer premises equipment.**

(a) Any communications common carrier may provide, under tariff, customer premises equipment (other than hearing aid compatible telephones as defined in part 68 of this chapter, needed by persons with hearing, speech, vision or mobility disabilities. Such equipment may be provided to persons with those disabilities or to associations or institutions who require such equipment regularly to communicate with persons with disabilities. Examples of such equipment include, but are not limited to, artificial larynxes, bone conductor receivers and TTs.

(b) Any carrier which provides telecommunications devices for persons with hearing and/or speech disabilities, whether or not pursuant to tariff, shall respond to any inquiry concerning:

(1) The availability (including general price levels) of TTs using ASCII, Baudot, or both formats; and

(2) The compatibility of any TT with other such devices and computers.

**§ 64.607 Provision of hearing aid compatible telephones by exchange carriers.**

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid compatible telephone, as defined in part 68 of this chapter, and provide related installation and maintenance services for such telephones on a detariffed basis to any customer with a hearing disability who requests such equipment or services.

**§ 64.608 Enforcement of related customer premises equipment rules.**

Enforcement of §§ 64.606 and 64.607 is delegated to those state public utility or public service commissions which adopt those sections and provide for their enforcement.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 91-18153 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 91-117; RM-7670]**

## Radio Broadcasting Services; Edgewater, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 226C3 for Channel 226A at Edgewater, Florida, and modifies the construction permit (BPH-880406MI) to specify operation on the higher class channel, at the request of deHaro Radio, Ltd. See 56 FR 19827, April 30, 1991. Channel 226C3 can be allotted to Edgewater in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 8.4 kilometers (5.2 miles) south of the community. The coordinates are North Latitude 28-54-52 and West Longitude 80-53-48. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 9, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 91-117, adopted July 17, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 226A and adding Channel 226C3 at Edgewater.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 91-18150 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-74; RM-7163]

## Radio Broadcasting Services; West Palm Beach, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 221C3 for Channel 221A at West Palm Beach, Florida, and modifies the license for Station WNGS(FM) to specify operation on the higher class channel, at the request of Pearl Broadcasting, Inc. See 56 FR 14052, April 5, 1991. Channel 221C3 can be allotted to West Palm Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) north, in order to avoid a short-spacing to a construction permit for Station WZZR(FM), Channel 224C2, Stuart, Florida. The coordinates are North Latitude 26-49-14 and West Longitude 80-02-26. In accordance with Section 1.420(g) of the Commission's Rules, the license of Station WNGS(FM) will be modified to specify operation on Channel 221C3. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 9, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 91-74, adopted July 11, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 221A and adding Channel 221C3 at West Palm Beach.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 91-18147 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-123; RM-7693]

## Radio Broadcasting Services; Newton, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 278B1 for Channel 278A at Newton, Illinois, and modifies the construction permit (BPH-880727MI) for Station WIKK to specify operation on the higher class channel, at the request of S. Kent Lankford. See 56 FR 19828, April 30, 1991. Channel 278B1 can be allotted to Newton in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 9.9 kilometers (6 miles) northwest of the community. The site restriction is necessary in order to avoid short-spacings to a construction permit for Station WUEZ(FM), Channel 278A, Christopher, Illinois, and the licensed sites of Station WFIU(FM), Channel 279B, Bloomington, Illinois, and Station WDBR(FM), Channel 279B, Springfield, Illinois. The coordinates are North Latitude 39-04-31 and West Longitude 88-11-19. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 9, 1991

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 91-123, adopted July 17, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (232) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 278A and adding Channel 278B1 at Newton.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 91-18149 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-42; RM-7616]

## Radio Broadcasting Services; Eldon, IA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Rivertown Communications Company, allots Channel 282C3 to Eldon, Iowa, as the community's first local FM service. See 56 FR 9190, March 5, 1991. Channel 282C3 can be allotted to Eldon in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) south to avoid a short-spacing to Station KTOF, Channel 283C1, Cedar Rapids, Iowa, at coordinates North Latitude 40-51-15 and West Longitude 92-15-15. With this action, this proceeding is terminated.

**DATES:** Effective September 9, 1991. The window period for filing applications will open on September 10, 1991, and close on October 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 91-42, adopted July 8, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Eldon, Channel 282C3.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 91-18146 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 90-619; RM-7565]**

## Radio Broadcasting Services; Houston and Thayer, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 257C2 for Channel 257A, Houston, Missouri, and modifies the license for Station KUNQ(FM) to specify operation on Channel 257C2. This action is taken in response to a petition filed by Texas County Radio, Inc. See 55 FR 53316, December 28, 1990. The coordinates for Channel 257C2 at Houston are 37-06-15 and 91-50-30. To accommodate the upgrade at Houston we will substitute Channel 222A for vacant Channel 257A, Thayer, Missouri. Channel 222A is site restricted 5.6 kilometers (3.5 miles) east of Thayer at coordinates 36-30-13 and 91-28-56. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 9, 1991. The window period for filing applications for Channel 222A at Thayer will open on September 10, 1991, and close on October 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 90-619, adopted July 11, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting

**PART 73—[AMENDED]**

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

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 257A and adding Channel 257C2 at Houston and by removing Channel 257A and adding Channel 222A at Thayer.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 91-18148 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 215**

**[Docket No. 910492-1191]**

## Subsistence Taking of Northern Fur Seals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final notice of estimates of subsistence need; request for comments.

**SUMMARY:** Regulations on subsistence taking of northern fur seals require NMFS to publish a summary of the previous year's fur seal harvest and a discussion of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands. NMFS published that notice on May 1, 1991. Following a 30-day public comment period and two public meetings, NMFS is publishing this final notice of the expected harvest levels for 1991 as follows: St. George Island: 181-500; St. Paul Island: 1145-1800. NMFS is considering methods to determine subsistence needs more accurately and to define or quantify wasteful use more precisely. Comments are invited on these issues.

**DATES:** The final notice of estimates of subsistence needs is effective upon filing and applies to the harvest beginning after June 30, 1991. Comments concerning methods to determine subsistence needs and to define wasteful use are invited through September 31, 1991.

**ADDRESSES:** Comments should be addressed to Lynne Harris or Dr. Aleta A. Hohn, NMFS Office of Protected Resources, 1335 East-West Highway, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Lynne Harris, (301) 427-2289, Dr. Aleta A. Hohn, (301) 427-2289, or Dr. Steve Zimmerman, (907) 586-7235.

**SUPPLEMENTARY INFORMATION:**

### Background

The subsistence harvest of northern fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found at 50 CFR part 215 subpart D—Taking for Subsistence Purposes. Those regulations were promulgated under the authority of the Fur Seal Act, 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence requirements of the Pribilovians using humane and non-wasteful harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The purpose of the annual notice is to provide subsistence estimates for the current year harvest for St. Paul and St. George Islands. The estimates are given as a range, the lower end of which can be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) determines that the subsistence needs of the Pribilovians have not been satisfied. Conversely, the harvest can be terminated before the lower range of the estimate is reached if it is determined that the subsistence needs of the Pribilovians have been met or the harvest has been conducted in a wasteful manner.

The following subsistence harvest estimates and actual harvest levels have been recorded on the Pribilof Islands since 1985:

| Year | Subsistence Estimates | | Actual Harvest Levels | | |
|---|---|---|---|---|---|
| | St. Paul Island | St. George Island | St. Paul Island | St. George Island | Total |
| 1985 | — | — | 3,384 | 329 | 3,713 |
| 1986 | 2,400–8,000 | 800–1,800 | 1,299 | 124 | 1,423 |
| 1987 | 1,600–3,000 | 530–1,000 | 1,710 | 92 | 1,802 |
| 1988 | 1,800–2,200 | 600–725 | 1,145 | 113 | 1,258 |
| 1989 | 1,600–1,800 | 533–600 | 1,340 | 181 | 1,521 |
| 1990 | 1,145–1,800 | 181–500 | 1,077 | 164 | 1,241 |

**Subsistence Harvest Estimates for 1991**

NMFS published a notice of proposed harvest levels summarizing the 1990 harvest and estimating for 1991 a range of subsistence needs of 1,314–1,560 seals on St. Paul Island and 135–172 seals on St. George Island (56 FR 19970, May 1, 1991). These estimates represented, for each island, the average number of seals taken during each of the past five harvests plus one standard deviation. This method, i.e., the use of an average and standard deviation for estimating subsistence needs, was chosen because NMFS thought previous harvest levels (excluding 1985) reflected the best available information on subsistence needs for fur seals by the Pribilovians, and the method incorporated annual variation in need, allowed for somewhat changing circumstances on the islands, and considered that the population on the Pribilofs has remained stable over the past several years. The method was unsatisfactory to all commenters, however, and was abandoned. The objections to the averaging technique are fully discussed later in this notice.

The subsistence harvest estimates are intended as estimates of need, not quotas. One consequence of the averaging technique described above was to restrict estimated levels of need to a very small range, inferring the existence of a more precise technique for estimating need than is currently available and giving the estimates an appearance of a quota. Some modification of the proposed estimates was required to broaden the range to encompass previous harvest levels while including information from the Pribilovians about their current-year subsistence needs.

NMFS has determined that a more acceptable method for estimating current-year needs is to use last year's harvest levels as a baseline. The baseline can then be adjusted to account for changing conditions, such as storage capability, employment, and utilization of the animals, if sufficient evidence is provided to warrant an adjustment. NMFS stresses that past harvest levels are not the controlling factor in determining current estimates of subsistence needs. Evidence of increasing subsistence need will be weighed more heavily than other factors.

For 1991, NMFS has estimated that the subsistence needs are the same as those estimated for 1990: St. George Island: 181–500; St. Paul Island: 1,145–1,800. While the lower end of the range represents a slight increase over the number of seals harvested in 1990 (the baseline number), the number harvested in 1990 was very close to the lower end of the estimated levels. In addition, residents on St. Paul and St. George Islands have stated that more seals are needed in 1991, although there was not enough new, factual evidence presented to NMFS to warrant, *a priori*, an increase in the lower end of the 1990 estimated range. The upper bound of the harvest estimates reflects the number of animals requested by the Pribilovians.

The estimated levels for 1991 encompass the proposed level of 1,314–1,560 seals on St. Paul Island, and are greater than the proposed level of 135–172 seals on St. George Island, because of the change from the averaging method to using levels from the previous year as a baseline. For both islands, the final range is greater than the proposed range, acknowledging, as discussed above, the current difficulty in estimating with the precision suggested by use of the standard deviation.

From June 30 through August 8 of each year the Pribilovians may harvest up to the lower bound of the estimate. Beyond August 8, additional harvesting requires authorization from the Assistant Administrator and is subject to specific requirements to guard against the take of females. At any time during the harvest season, once the lower bound is reached, the harvest must be suspended for no longer than 48 hours pursuant to 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of the island residents have been met. If the Pribilovians can substantiate additional need for seals and there has been no indication of waste or the commercial use of fur seal parts, the Assistant Administrator will authorize additional takes up to the number required for subsistence purposes. Criteria on which to base a decision on whether or not to resume the harvest include assessments of: (1) The number of subsistence users needing additional meat; (2) the number of unfilled orders; and (3) whether wasteful take has occurred.

The primary mechanism for determining whether waste has occurred is through direct supervision. For the harvest to be considered non-wasteful, NMFS requires, in addition to removal of the most prized portions of the seal (flippers, shoulders, chests, livers, and hearts), the use of "other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections." On the basis of this definition, NMFS has monitored each daily harvest on St. Paul Island to determine whether all flippers, shoulders, hearts, chests, livers, some ribs and backbones, and most other readily usable tissues and organs are being taken.

A second measure that may be relevant in determining whether the harvest is wasteful is the percent of a carcass that is used for subsistence purposes (percent use). Studies in 1985 and 1986 indicated that, on average, the maximum percentage of a fur seal (by weight) that potentially could be used for food is approximately 53.3 percent, including those parts not traditionally eaten by the Pribilovians. The same studies showed that when the Pribilovians butcher a fur seal in a way that removes only the most highly prized portions, about 30 percent of the seal is used. NMFS has indicated (51 FR 24832, July 9, 1986) that the taking of only these parts constitutes wasteful taking and has encouraged the highest possible levels of utilization. In the past, when the level of utilization has fallen below certain levels, NMFS has expressed concern. Nonetheless, NMFS has never specified a precise percent utilization that is required. It may be difficult to objectively quantify or substantiate a minimum percent-use requirement; under certain circumstances, a low level of utilization may not be indicative of waste. However, prolonged levels of low utilization without an adequate

explanation may justify increased scrutiny. Until a better method is developed, NMFS will continue to monitor the percent use.

NMFS reiterates that it expects the use of harvested animals to be non-wasteful and will continue its supervision and monitoring program during 1991.

NMFS acknowledges that a method to determine subsistence needs more accurately should be developed. NMFS also recognizes that there may be a need for a better or more quantifiable definition of wasteful use. The existing regime was proposed in 1986 on an emergency basis. The 1986 emergency rule stated that the regime could be re-evaluated at a later date. As this regime is not fully satisfactory to all interest groups, NMFS hereby provides notice that the regime will be re-evaluated. The goals are (1) to find a better method for estimating the subsistence needs of Pribilof Island residents and (2) to find a better method for determining what constitutes wasteful use. NMFS welcomes input from interested parties in meeting these goals so that the decision-making process will be more straight-forward and predictable for all concerned. Comments are invited through September 31, 1991 (see **ADDRESSES**).

**Response to Public Comments**

During the public comment period, the following groups provided comments on the 1991 proposed harvest levels: City of St. Paul, Aleut Community of St. Paul, St. George Traditional Council, St. Paul Traditional Council, Aleutian Pribilof Island Association, Central Bering Sea Association, Alaska Federation of Natives, Friends of Animals, and Humane Society of the United States.

Comments focused mainly on the following issues: Whether the use of seals has been wasteful, the effect of the harvest on the fur seal population, the humaneness of the harvest, the commercial use of bacula or "seal sticks", the method used for determining subsistence needs in the notice of proposed levels, and the levels proposed for 1991.

**Efficient Use**

The issue of whether past harvests have been wasteful was one of the most contentious points from the notice of proposed subsistence needs. Some of the commenters pointed to the average percent-use figures from the 1989 (38.2 percent) and 1990 (39.9 percent) harvests as evidence of wasteful taking. One commenter expressed the opinion that significantly higher proportions of the seals could be utilized and NMFS should require these higher utilization levels in order for the harvest to continue. The commenter based these remarks on use levels recorded during the 1986 subsistence harvest where (1) percent use reached 50 percent or higher on approximately half of the harvest days, (2) on one day, a percent-use figure of 63.6 percent was attained, and (3) the average percent use for the 1986 subsistence harvest was 47.8 percent. On the basis of these data, the commenter believes that NMFS should set a minimum percent-use level of 60 percent. NMFS responds that the 50 percent and higher utilization levels reported during the 1986 harvest resulted from a significant number of harvesters completing only minimal butchering on the fields, removing only the head, skin, and blubber from the seals before taking the entire carcass home for further butchering. On those days, it is unknown what percentage of the animals was actually retained for subsistence use; it is only known what average percentage of the animals was removed from the harvest fields.

Some of the comments maintained that the fur seal harvest should be curtailed or halted because NMFS has failed to ensure that the harvest be conducted in a non-wasteful manner. They pointed to the statutory mandate at 16 U.S.C. 1371(b)(3), and the regulations at 50 CFR 215.2, which prohibit "taking of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal." In addition, NMFS was charged with "failing to take steps to deter obvious and demonstrable waste" with respect to previous harvests. One set of comments referred to statements made by NMFS in a letter to the Aleut Community Council of St. Paul in July 1990 recognizing apparently falling use levels in the 1989 and 1990 harvest. The letter noted that the 1988 and 1989 harvests yielded approximately the same amount of meat in pounds, but 195 fewer seals were taken in 1988. The purpose of the letter was to request from the Pribilovians an explanation of falling use levels. The commenter suggested that NMFS make a policy statement reflecting its intent to shut down the harvest if use levels fall.

NMFS is unaware of "obvious and demonstrable waste" in the harvest, overseas the harvest on St. Paul to ensure that the mandated parts of the animal are harvested, and thinks that the harvest needs to be conducted in a non-wasteful manner. NMFS continues to accept that the maximum percent available for food is 53.3 percent. Taking of the minimum parts required results in the use of at least 30 percent of an animal, or about 56 percent of that part of the animal available for food. Studies have not been conducted, however, to objectively determine a lower bound on acceptable percent-use levels or, therefore, what constitutes a "substantial portion" of a fur seal for subsistence use. As stated earlier, NMFS has not specified a precise percent utilization that is required and it may be difficult to quantify objectively that level. NMFS will continue, however, to monitor percent use.

Some commenters criticized the use of the "butterfly" butchering technique, claiming the use of this technique results in the waste of some useable portions of the seal. The Pribilovians do not use the "butterfly" technique exclusively, but do regard it as a skilled method for obtaining certain cuts of meat. Some useable, but less desirable, portions of the seal are not removed when the "butterfly" technique is used, but other techniques that remove greater amounts of meat are also frequently used. NMFS encourages the fullest possible use of each animal, but does not agree that the "butterfly" technique must be eliminated.

NMFS appreciates that part of the criticism about full utilization of the fur seals in a carry-over from the commercial harvest when the large number of animals taken allowed the Pribilovians to take only the most prized portions from each animal for subsistence. With the cessation of the commercial harvest, this practice is no longer an option because the animals are taken for subsistence only. An invitation has been extended to the Humane Society of the United States to observe the harvest and the use of the butchering techniques to demonstrate their efficiency.

**Effect on the Status of the Fur Seal Population**

Some comments focused on the effect of the subsistence harvest on a depleted stock. One commenter suggested that NMFS begin research initiatives into the effects of removal of sub-adult males from the subsistence harvest.

NMFS has calculated the effects of removal of relatively small numbers of sub-adult males on long-term population trends. Specifically, NMFS has evaluated the removal of approximately 1,000–2,000 sub-adult males from the population of over 800,000 seals. Seals taken in the harvest are generally 2 to 3 years of age. On the basis of the estimated number of seals in the 1987–1988 cohorts on St. Paul (1987—171,600; 1988—202,300) and on life tables for

males of this species (survival rates in 1987=0.296 and in 1988=0.38), it is estimated that a pool of approximately 60,000–70,000 males in age classes 2 and 3 existed in the population on St. Paul in 1990. Consequently, the 1990 harvest of 1,077 seals removed only about 1.5 percent of the males in those age classes. Pup production has remained relatively stable in recent years.

One commenter remarked that it is an insult for NMFS to consider sub-adult male seals as "surplus" (commenter's wording) animals that can be harvested without concern for the reproductive future of the species. The commenter mentioned "recent studies by Soviet scientists" that "apparently indicate" that sub-adult males may occasionally be mating with females and therefore possibly contributing to population growth. Contrary to this contention, male fur seals do not achieve sexual maturity until 5 years of age; sub-adult male seals are biologically incapable of inseminating females and are not, therefore, contributing to the current reproductive potential of the population.

NMFS acknowledges that other known sources of human-induced mortality are also removing individuals from the depleted stock of northern fur seals. This mortality includes an incidental take, encompassing both sexes and all ages, of an estimated 14,000 fur seals per year in marine debris and about 3,400–4,800 in high seas drift gillnets, plus an additional unknown number in large-mesh gillnets. The subsistence harvest is regulated to minimize further negative effects on the population by limiting the harvest to sub-adult males. In addition, NMFS has proposed (56 FR 25066, June 3, 1991) that the option of extending the harvest into the time when females use haul-outs be removed to virtually eliminate the possibility that females will be taken.

**Humane Taking**

A question was raised about the humaneness of the harvest, particularly as regards the incidence of heat stress among seals during harvest activity. The commenters questioned the legitimacy of NMFS reporting only one seal death due to heat stress during the 1990 harvest and asked the following: (1) How many seals exhibited signs of heat stress during the 1990 harvest? (2) Could any seals die of heat stress unobserved? (3) What has NMFS done to eliminate heat stress? (4) Does NMFS monitor animal temperatures and stop the harvest as the risk of heat stress increases?

NMFS employs a veterinary pathologist as a humane observer during all harvest activities. This observer monitors rectal temperatures of animals taken and has the authority to suspend harvest activities if the temperatures indicate heat-stress potential, or if signs of heat stress are observed among the animals being herded. If an animal is suffering from heat stress, or dies as a result of heat stress, that animal is taken as part of the subsistence harvest. Of the animals rounded up during the 1990 harvest, six exhibited signs of heat stress and five of these were taken for subsistence. Some animals appear to be more susceptible to heat-stress than others, and instances of heat stress related mortality also occur in non-harvest situations with similarly low frequency. NMFS evaluation of the one seal that died of heat stress after a harvest revealed that its blubber layer was nearly four times as thick as the average for the other seals taken in the harvest. A similar finding was noted in the evaluation of a heat stress mortality from a non-harvest situation.

**Commerce in Seal Sticks**

Commenters expressed concern over the potential sale of seal sticks and, particularly, that the potential for monetary gain provides the incentive for increased harvest levels over and above what is needed for subsistence if the animals are taken in a non-wasteful manner. Seal sticks (bacula or penis bones) are used in the Orient as aphrodisiacs. Last year, the Pribilovians reported to NMFS the presence of foreign merchants on the Pribilofs attempting to purchase seal sticks during the harvests. Commenters wanted to know what was being done to prevent the Pribilovians from illegally selling seal sticks to these foreign merchants. These commenters also suggested that NMFS minimize the potential for illegal trade by collecting and destroying the seal sticks from each animal harvested. NMFS believes that such a requirement is unnecessary, especially in light of efforts taken in recent years to ensure no such commercial activity would occur. Last year NMFS observers visited the carcass dumps daily and reported that there was no indication that seal sticks were being removed.

NMFS believes no other monitoring is necessary, absent a sufficient indication of commercial sale of seal sticks. NMFS is concerned about the potential problem, however, and will continue to monitor seal stick disposition and increase enforcement efforts, if necessary. In addition, any evidence of the commercial use of seal sticks or other parts of fur seals will result in termination of the harvest.

**Method for Setting Harvest Levels**

Almost all commenters expressed dissatisfaction with NMFS' use of a 5-year average to set the 1991 proposed harvest estimates. Objections included: An average has no relation to actual need this year; past harvests have been wasteful and therefore the number of animals taken was unnecessarily high; an average has no link to economic treads; past years' harvests have reflected only circumstances and not need and, therefore, the levels are too low. NMFS used an average to set this year's proposed harvest estimate because past years' takes offer the one factual indication of subsistence need. On the basis of the comments received, NMFS has decided not to use an average as the final harvest estimate. All other indicators of need, however, have proven highly contradictory or subjective. NMFS welcomes suggestions on an objective, accurate method to determine subsistence needs on a yearly basis.

The same commenters objected to the use of a standard deviation to set the upper range of the harvest estimate. The standard deviation of the mean quantifies the variability of the annual harvest data. One standard deviation will account for 67 percent of the variability associated with the mean. This level was selected as a conservative measure of the variability that might be expected. However, based on comments received, NMFS has decided not to use standard deviation to determine the final harvest estimate.

Commenters that objected to the proposed level for 1991 because it was much higher than the 1990 level cited that the actual take of seals in 1990 was lower than the lower harvest estimate, their belief that economic conditions on the Pribilofs were unchanged or improved from previous years, and their belief that 'wasteful harvesting' has occurred, as evidenced by decreasing percent-use levels in recent harvests. These commenters used a 60-percent use figure and pounds of meat taken in previous harvests to claim that the Pribilovians subsistence needs could be met by taking 715 seals.

Commenters from the Pribilof Islands requested that the proposed harvest estimates be higher. St. Paul requested 1,800 seals; St. George requested 500. The Pribilovians thought that they were being penalized because recent actual harvest levels have been below estimated levels even though these low levels of take reflected certain circumstances (no available freezers to store meat, lack of experienced sealers

because of employment in seasonal fisheries, etc.) rather than their actual need. The Pribilovians stated, as they have in previous years, that they have had a chronic shortage of long-term storage space for perishable food stuffs, effectively restricting harvest levels to what could be used for immediate consumption. Commenters from St. George pointed out that recent harvest levels on St. George have averaged less than one seal per year per person, far below traditional subsistence levels and enough to satisfy only immediate need. These commenters remarked that this circumstance will be remedied in 1991 because St. George Island will have modern freezer capacity and will be able to store more meat than in the past. For both islands, it was argued that subsistence needs are greater in 1991 than in 1990 because the fish processing plants are not operating or doing so only intermittently. In addition, on St. George, no commercial halibut fishing (the chief source of income on this island) will take place.

The Pribilovians attested that their true annual need for seal meat has never been fully satisfied. The timing of the harvest coincides with the peak of the summer fisheries and construction activities. Most experienced sealers are also heads of households and must therefore take advantage of what limited employment opportunities arise on the islands and are often unavailable to carry out subsistence harvest activities. The limited 6-week harvest is the only time during the year that fur seals may be harvested, so there is no apparent way to eliminate the competition between summer fishery and construction employment and subsistence harvest volunteers, thereby, they argued, reducing the number of seals physically able to be harvested.

The Pribilovians also commented that critics of the harvest do not make any provision for the cultural aspects of the fur seal harvest and the Pribilovians' desire to preserve some semblance of their Aleutian heritage. Even if economic conditions were greatly improved, they felt that they would still be entitled to some animals for subsistence and that until accurate information is available to guide a determination of subsistence need, NMFS must set harvest levels that are sufficient to meet the stated needs of the Pribilovians while not disadvantaging the seal population.

To the above comments on harvest levels, NMFS responds that no evidence exists about whether or not the Pribilovians' true annual subsistence needs have been met during the 6–week harvest or, conversely, that if all the circumstances that have purportedly limited the harvest to levels below those stated as needed by the Pribilovians were removed, more seals would actually be harvested for subsistence use. Although some of the arguments by the Pribilovians have been similar from one year to the next, the lower bound of the subsistence estimate has been reached in only one of 5 years since 1986 and a greater need has not been indicated when the end of the harvest approached. At this time, NMFS is looking for a better way to ascertain need.

Aleut representatives are concerned that assessments to decide whether the harvest may resume if the lower bound has been reached may not be accomplished within the 48-hour period required by the regulations. They believe that the distance between the Pribilofs and the Washington, DC, area, the difference in time zones, and the possibility that decision-makers may be away from the office could cause delays that may result in the loss of some part of their subsistence harvest. The Assistant Administrator will make every effort to ensure that necessary determinations are made within 48 hours.

Dated: July 26, 1991.

**Samuel W. McKeen,**

*Executive Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 91–18224 Filed 7–29–91; 11:48 am]

BILLING CODE 3510–22–M

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**50 CFR Part 672**

**[Docket No. 901184–1042]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of inseason adjustment, request for comments.

**SUMMARY:** NMFS is taking measures to prevent overfishing of demersal shelf rockfish (DSR) in the Southeast Outside (SEO) District of the Gulf of Alaska (GOA) by closing the SEO District to vessels using trawl gear for all groundfish. This action is necessary to prevent overfishing of DSR. It is intended to promote fishery conservation and management goals of the North Pacific Fishery Management Council (Council).

**DATES:** Effective 12 noon Alaska local time (A.l.t.), on July 29, 1991, through 12 midnight A.l.t., December 31, 1991. Comments are invited through August 13, 1991.

**ADDRESSES:** Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 672. Additional regulations pertaining to U.S. fishermen are found at 50 CFR part 620.

The Council recommended at its December 3–7, 1990, meeting, that the acceptable biological catch (ABC) and total allowable catch (TAC) specifications for DSR be set at 445 and 425 metric tons (mt), respectively. The Secretary of Commerce (Secretary) implemented the Council recommendations (56 FR 8723; March 1, 1991).

The FMP requires that conservation and management measures prevent overfishing. The Guidelines for Fishery Management Plans, 50 CFR 602.11(c)(1), define overfishing as a level or rate of fishing mortality that jeopardizes the long term capacity of a stock or stock complex to produce its maximum sustainable yield on a continuing basis.

The FMP describes the maximum fishing mortality rate that would result in a catch constituting overfishing of a target species category within the meaning of the FMP. The ABC specification of 445 mt for DSR is numerically equal to the definition of overfishing defined in the FMP. Incidental catches of DSR could result in the DSR ABC being exceeded and, therefore, overfished because only 164 mt remain of the DSR ABC.

Under § 672.22(a)(2) (i) and (ii), the Secretary is authorized to implement an inseason adjustment that closes all of a management area if the Secretary has determined that such an adjustment is necessary to prevent the overfishing of any species or stock of fish or shellfish. In order to implement such an inseason

adjustment, the Regional Director must determine, and the Secretary concur, that the management adjustment selected is the least restrictive necessary to achieve the purpose of the adjustment. Section 672.22(a)(3) lists several factors the Regional Director may consider in making such a determination. As required by § 672.22(a)(3), the Secretary has considered all information relevant to the following factors:

(1) *The effect of overall fishing effort within a regulatory area*—The SEO District, as well as the rest of the GOA, is closed to vessels using hook-and-line gear for the remainder of the year as a result of reaching the Pacific halibut (halibut) prohibited species catch allowance allocated to hook-and-line gear (56 FR 32119, July 15, 1991). Vessels using pot gear may commence fishing the Pacific cod in the SEO District, which could result in DSR incidental catches, but this gear type has not been used in the SEO District in recent years. NMFS has no information to indicate that such fishing would commence. NMFS anticipates that any pot fishing effort would be minimal, because certain amounts of lost hook-and-line gear might cause gear entanglements with pot gear. Nonetheless, NMFS anticipates that if pot gear is used in a directed cod fishery, any incidental catches of DSR would be insignificant.

Vessels using trawl gear, however, could expend considerable fishing effort for target species categories of groundfish that are available in the Eastern Regulatory Area, which encompasses the SEO District. Through July 14, 1991, the following amounts are available for harvest: Arrowtooth flounder—4,717 mt; deep water flatfish—2,890 mt; shallow water flatfish—1,997 mt; flathead sole—2,999 mt; Pacific cod—2,773 mt; "other rockfish"—3,030 mt; and thornyhead rockfish—479 mt. Thornyhead rockfish is a target species category with a GOA-wide TAC, all of which could be harvested in the SEO District.

Only 144 mt and 164 mt of DSR remain before the TAC and the ABC, respectively, are reached. NMFS anticipates that incidental catches of DSR in these fisheries could result in the DSR ABC being exceeded.

(2) *Catch per unit of effort and rate of harvest*—Except for deep water flatfish, "other rockfish," and thornyhead rockfish, trawling for the other groundfish species could result in substantial incidental amounts of DSR because these species cohabit areas with DSR and incidental catch rates could be high. Also, incidental catch rates of DSR while fishing for deep water flatfish, "other rockfish," and thornyhead rockfish could be high because the State of Alaska allows a ten percent bycatch rate (see 5 AAC 28.170) of DSR by trawl vessels under the authority of the FMP. If trawl vessels topped off their catches, substantial amounts of DSR could be caught.

(3) *Relative abundance of stocks within the area*—DSR in the SEO District represents only a small fraction of harvestable groundfish compared to the Eastern Regulatory Area. The ABC of 445 mt is only 0.7 percent of the total ABC for all other groundfish of 67,392 mt for the Eastern Regulatory Area.

(4) *The condition of the stock within all or part of a regulatory area*—NMFS has determined the status of DSR stocks to be depressed and declining. This determination is based on information contained in the Council's Stock Assessment and Fishery Evaluation Report, dated November 1990.

(5) *Economic impacts on fishing businesses being affected*—The second opening of the hook-and-line halibut fishery is scheduled for September 3, 1991. About 2.4 million pounds of halibut with an exvessel value of about $3,690,000 are expected to be harvested in that fishery. If the amount of DSR needed to support bycatch needs in that fishery is not available, the halibut fishery might be closed to prevent overfishing of DSR. Fishermen could forgo the exvessel value of the halibut fishery. Trawl fishermen could forgo the value of the "other rockfish" and thornyhead rockfish which is estimated at $2.3 million. NMFS anticipates that these fisheries would have been pursued in the SEO District. NMFS does not anticipate other trawl fisheries in the SEO District. If other trawl fisheries had been prosecuted, losses to fishermen would be higher than those estimated.

(6) *Other factors relevant to the conservation and management of groundfish species for which a TAC has been specified*—Following the September 3, 1991, halibut fishery, NMFS will reassess the amount of the DSR TAC remaining. If sufficient amounts remain, the Secretary may rescind or modify this inseason action.

The Secretary has determined that the closure of the SEO District of the GOA to vessels using trawl gear for all groundfish is the least restrictive management adjustment necessary to prevent overfishing of DSR in the GOA because this action accounts for the effects on DSR of different gears, areas, and groundfish targets, and does not close all GOA fisheries. This action will allow other fisheries to continue during noncritical time periods. Therefore, under § 672.22(a)(1)(i), the Secretary is issuing an inseason adjustment closing the SEO District to directed fishing for groundfish by vessels using trawl gear from July 29, 1991, for the remainder of the 1991 fishing year.

## Classification

This action is taken under 50 CFR 672.22 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent overfishing of DSR stocks. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the above address through August 13, 1991.

## List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: July 26, 1991.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91-18213 Filed 7-29-91; 11:48 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 333

### Passing Over Preference Eligibles for Appointments Outside Registers

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to revise its regulations governing procedures used to select candidates for temporary and term appointments outside registers. The revised regulations would clarify public notice requirements and the respective responsibilities of agencies and OPM for approving selections of candidates not eligible for veterans preference when preference eligibles with equal or higher ranking are available.

**DATES:** Comments must be received by September 30, 1991.

**ADDRESSES:** Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, room 6F08, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Tracy E. Spencer (202) 606–0960.

**SUPPLEMENTARY INFORMATION:** Section 3318 of title 5, United States Code, sets out procedures agencies must follow to pass over a preference eligible on a list of eligibles in order to select a candidate who is not eligible for veterans preference. The law requires that a selecting official give reasons for passing over any preference eligible and that selection of the nonveteran be approved by OPM. In the case of a preference eligible with a compensable service-connected disability of 30 percent or more, the law further requires that he or she be notified by the agency of the proposed passover and given 15 days to reply to OPM and prohibits OPM from delegating its authority to approve the passover.

Section 3327 of title 5, United States Code, requires agencies to give public notice through OPM and State Employment Service offices whenever they are accepting outside applications for positions in the competitive service.

All of these requirements apply to temporary and term positions for which agencies recruit and make appointments outside registers. Instructions for administering them have generally been issued through the Federal Personnel Manual system. However, because of their statutory basis, OPM has determined that basic procedures should be set out in regulations.

The proposed regulations would add the statutory public notice and passover requirements to the procedures for making temporary and term appointments outside registers contained in 5 CFR part 333. The regulations would also delegate to agencies authority to approve passover of preference eligibles other than those with compensable service-connected disabilities of 30 percent or more. The procedures in 5 CFR part 333 apply only when OPM has authorized an agency to conduct recruiting, rank candidates, and make appointments outside registers. Delegation of authority to pass over preference eligibles on resulting lists of eligibles would be a logical adjunct to the outside-register appointing authority.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only the procedures used to appoint certain Federal employees.

### List of Subjects in 5 CFR Part 333

Administrative practice and procedure, Government employees.

Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, OPM proposes to amend 5 CFR part 333, as follows:

## PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

1. The authority citation for part 333 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 333.203 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5).

**§ 333.103 [Redesignated from § 333.102]**

2. Section 333.102 is redesignated as § 333.103 and a new § 333.102 is added to read as follows:

**§ 333.102 Public notice for temporary and term appointments outside the register.**

An agency must notify appropriate OPM Service Centers and State Employment Service offices about vacant positions they plan to fill under procedures in this part. The notices must describe the positions (including qualification requirements), application procedures, and filing deadline. The notice must also specify that the U.S. Government is an Equal Opportunity Employer, and that eligible applicants are entitled to veterans preference in employment. OPM will issued specific instructions for preparing notices in chapter 333 of the Federal Personnel Manual.

3. In § 333.201, paragraph (c) is revised to read as follows:

**§ 333.201 Making appointments from an unranked list.**

* * * * *

(c) Except as provided in paragraph (b) of § 333.202 and in § 333.203 of this part, qualified candidates not eligible for veteran preference may be selected only when no qualified veteran preference eligibles are available.

4. In § 333.202, paragraph (b)(2) is revised to read as follows, and paragraph (c) is removed:

**§ 333.202 Making appointments from a numerically ranked list.**

* * * * *

(b) * * *

(2) Consider a preference eligible whose eligibility for further consideration for the position has been discontinued as provided in § 333.203.

5. A new § 333.203 is added to read as follows:

**§ 333.203 Passing over and discontinuing consideration of preference eligibles.**

(a) *Preference eligibles with compensable service-connected disabilities of 30 percent or more.* When an agency making an appointment proposes to pass over a preference eligible who has a compensable service-connected disability of 30 percent or more and proposes to select a nonpreference eligible, the agency must—

(1) Submit its reasons for so doing to the OPM office with examining jurisdiction over the position;

(2) Notify the preference eligible of the proposed passover, the reasons for it, and his or her right to respond to those reasons to OPM within 15 days after the date of notification; and

(3) Obtain OPM's approval for the proposed passover before selecting the nonpreference eligible.

(b) *Other preference eligibles.* When an agency making an appointment proposes to pass over a preference eligible other than one described in paragraph (a) of this section and proposes to select a nonpreference eligible, the agency must record its reasons for doing so and must furnish a copy of those reasons to the preference eligible and to his or her representative on request.

(c) *Discontinuing consideration.* An agency may discontinue consideration of a preference eligible for a position only under the following conditions. (Position, for this purpose, refers to a specific set of duties, responsibilities, and qualification requirements under a single appointing official. Positions having different specific qualification requirements are considered separately under this paragraph, even if they are classified under the same title, series, and grade.) The agency may discontinue consideration if—

(1) On three occasions, the agency has considered and nonselected the candidate for the position in competition with other preference eligibles;

(2) The agency has obtained OPM's approval to pass over his or her name and select a nonpreference eligible in accordance with paragraph (a) of this section; or

(3) The agency has passed over his or her name and recorded its reasons for so doing as provided in paragraph (b) of this section.

[FR Doc. 91-18248 filed 7-31-91; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 967

**[FV-91-407PR]**

### Proposed Handling Regulation for Celery Grown in Florida

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes establishing the quantity of Florida celery which handlers may ship to fresh markets during the 1991–92 season at 6,789,738 crates or 100 percent of producers' base quantities. This proposal is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. As in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This proposal was recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

**DATES:** Comments must be received by August 12, 1991.

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

**FOR FURTHER INFORMATION CONTACT:** Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2522–S, Washington. DC 20090–6456; telephone: (202) 382–1754.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

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

There are an estimated 7 handlers of celery grown in Florida subject to regulation under the celery marketing order and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of celery handlers and producers may be classified as small entities.

This proposal is based upon the recommendation and information submitted by the Committee and upon other available information. The Committee met on June 11, 1991, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1991–92 season beginning August 1, 1991. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1991–92 supplies and prospective demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (407,384 crates) of the 1991–92 total base quantities is authorized for new producers and increases for existing producers. There were no applications for new base quantities or any requests for adjustments in base quantities from producers with existing base quantities.

The proposal would limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1991–92 season to 6,789,738 crates. It is expected that

the 6,789,738 crate marketable quantity will be above actual shipments for the 1991–92 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the proposal should lend stability to the industry and thus, help to provide consumers with an adequate supply of the product.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 10-day comment period is deemed appropriate because the new marketing season begins on August 1.

**List of Subjects in 7 CFR Part 967**

Celery, Florida, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is proposed to be amended as follows:

## PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**Subpart—Administrative Rules and Regulations**

2. A new section 967.327 is added to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

**§ 967.327 Handling regulation, marketable quantity, and uniform percentage for the 1991–92 season beginning on August 1, 1991.**

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 25, 1991.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–18089 Filed 7–31–91; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF ENERGY

## Office Of Fossil Energy

## 10 CFR Part 1049

## Guidelines for the Exercise of Limited Arrest Authority and Use of Force by Protective Force Officers of the Strategic Petroleum Reserve

**AGENCY:** Strategic Petroleum Reserve Office, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is issuing a notice of proposed rulemaking to prescribe guidelines pertaining to the exercise of limited arrest authority and use of force by Protective Force Officers of the Strategic Petroleum Reserve (SPR). These guidelines, which have been concurred in by the Attorney General, are in accordance with section 661 of the Department of Energy Organization Act (42 U.S.C. 7270a), which authorizes officers guarding the SPR to carry firearms while discharging their official duties, and in certain instances to make arrests without warrant.

**DATES:** Written comments must be received on or before September 3, 1991.

**ADDRESSES:** Send comments to: Durinda Robinson, Office of the Chief Counsel, Department of Energy, Project Management Office, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123.

**FOR FURTHER INFORMATION CONTACT:**

Ralph LaMonda, Office of the Strategic Petroleum Reserve, Department of Energy, Mail Stop FE–421, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4692.

Durinda Robinson, Office of Chief Counsel, Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734–4312.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Due to the lack of Federal authority to adequately protect the storage and other facilities of the SPR and persons in or upon the SPR, Congress enacted section 661 of the Department of Energy Organization Act. (42 U.S.C. 7270a). Section 661 authorizes SPR guards who are designated by the Secretary of Energy to carry firearms and to make warrantless arrests of persons reasonably believed to have committed offenses against the United States. Section 661 of the Act authorizes employees of the Department of Energy and Department of Energy contractors or subcontractors (hereinafter "Protective Force Officers") guarding the Strategic Petroleum Reserve established under part B of title I of the Energy Policy and Conservation Act, or its storage and related facilities, to carry firearms and make such arrests while discharging their official duties. These guidelines set forth procedures uniformly applicable to the exercise of such authority at all SPR sites, and are intended to assist officers in assuring the adequate protection of the SPR and persons and property in or upon the SPR and to assure the reasonable exercise of arrest authority and the reasonable use of force in the course of exercising such arrest authority.

**II. Discussion**

This section briefly discusses the contents and discusses the intended effect of each subpart of the proposed rule.

*Section 1049.1 Purpose*

Section 661 of the Act states that, under these guidelines, DOE employees and employees of DOE contractors and subcontractors have limited arrest authority and are authorized to carry firearms while discharging official duties. Section 1049.1 states that these guidelines establish policies and procedures regarding that authority.

*Section 1049.2 Scope*

Section 661 of the Act describes "official duties" as protecting the SPR or its storage or related facilities and protecting persons upon the SPR or its storage or related facilities. Thus, § 1049.2 states that these guidelines apply to the exercise of these official duties.

*Section 1049.3 Definitions*

Section 1049.3(b) and (d), which define "arrest" and "deadly force" respectively, are based on current case law. Section 1049.3(c) and (f), which define "contractor" and "SPR" respectively, are based on section 661 of the Act. The definitions of "Act," "Protective Force Officer," and "suspect" are self-explanatory.

*Section 1049.4 Arrest Authority*

Under section 661 of the Act, a Protective Force Officer while

discharging official duties may arrest any person without warrant for an offense against the United States if the officer has "reasonable cause" to believe that the person: (1) has committed or is committing a felony and is in or is fleeing from the immediate area of the crime; or (2) is committing a felony or misdeameanor in the officer's presence. Section 1049.4 restates section 661 of the Act and defines "reasonable grounds" to arrest based on current case law.

*Section 1049.5 Exercise of Arrest Authority—General Guidelines*

Section 1049.5(a) directs the officer to follow certain arrest procedures to ensure that the suspect is informed of the arrest and the reason for the arrest. However, this guidance is not intended to restrict the officer's ability to protect the SPR or persons upon SPR premises.

Section 1049.5(b) addresses the officer's authority to search the suspect or the area into which the suspect might reach to obtain a weapon or to destroy evidence. This section is based upon current case law.

Section 1049.5(c) mandates that the officer advise the suspect of the constitutional right against self-incrimination (*"Miranda"* warnings). However, this requirement is not intended to prevent the officer from responding to an imminent danger to himself or to other persons. Therefore, to protect the suspect and the officer in these circumstances, the officer must advise the suspect of this right as soon as practicable after the imminent danger has passed. This section is in accordance with current case law.

Section 1049.5(d) directs the transfer of custody to other law enforcement personnel to ensure the protection of the suspect's procedural rights. Section 1049.5(e) also is intended to protect the suspect's procedural rights. This subsection permits limited questioning by the officer as necessary to protect the SPR and persons upon the SPR, and also permits such questioning as authorized by other law enforcement personnel. This section is intended to restrict the officer from undertaking investigatory activities, a function which is not explicitly authorized by section 661 of the Act.

*Section 1049.6 Exercise of Arrest Authority—Use of Non-Deadly Force*

Section 1049.6 limits the officer's authority to use non-deadly force to force that is "reasonable and necessary" to apprehend or arrest the suspect to prevent escape or to defend the officer or other persons from what the officer "reasonably believes" to be the use or threat of imminent use of non-deadly force by the suspect. As opposed to the use or threat of imminent non-deadly force by the suspect, verbal abuse is not the basis for use of non-deadly force by the officer. This section is in accordance with current case law. To assure the use of uniform policy among SPR sites, § 1049.6 directs the officer to consult with DOE counsel and contractor counsel, as appropriate.

*Section 1049.7 Exercise of Arrest Authority—Use of Deadly Force*

In accordance with current case law and law enforcement practice, § 1049.7 limits the officer's authority to use deadly force, and states that the officer shall give a verbal warning if feasible, and shall not fire warning shots.

*Section 1049.8 Training of SPR Protective Force Officers and Qualification to Carry Firearms*

Section 661 of the Act authorizes Protective Force Officers to carry firearms if designated by the Secretary and qualified to use firearms under these guidelines. Section 1049.8 authorizes officers that have completed the basic training course to carry firearms and to use arrest authority. Sections 1049.8(b) contains a general, non-inclusive list of subject areas of the course. Section 1049.8(d) requires officers to maintain competency by subsequent annual training. Sections 1049.8(e) and (f) address qualification for the use of firearms. Section 1049.8 is a statement of departmental policy.

*Section 1049.9 Firearms and Firearms Incidents*

Section 1049.9 sets forth departmental policy regarding: (1) the type of firearms used; (2) security, inventory, and maintenance of firearms; (3) suspension of officers due to incidents involving use of firearms; and (4) reporting and investigation of firearms incidents.

*Section 1049.10 Disclaimer*

Section 1049.10 precludes any action by any person based upon these guidelines, which are prescribed solely for internal guidance Thus, these guidelines do not, and may not be relied upon to create, any substantive or procedural rights enforceable at law by any party in any civil or criminal proceeding.

## III. Procedural Requirements

*A. Section 501 of the DOE Organization Act*

Under section 501(c) of the DOE Organization Act, we are promulgating this notice in accordance with section 553 of title 5, United States Code, based upon our finding that no substantial issue of fact or law exists and that this rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

*B. Environmental Review*

This rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

*C. Review Under Executive Order 12291*

DOE has determined that the incremental effect of today's proposed rule, if finalized, will not have the magnitude of effects on the economy to bring the rule within the definition of a "major rule" contained in Executive Order 12291. The proposed rule would impose no regulatory burden on the economy, on individuals, public or private organizations, or state and local governments. The proposed rule is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Executive Order, the proposed rule was reviewed by the Office of Management and Budget (OMB).

*D. Review Under Executive Order 12612*

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to implement section 661 of the DOE Organization Act will not have any substantial direct effects on state and local governments within the meaning of the Executive Order. The rulemaking will affect Federal agency property that is not subject to direct State regulation.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act, Public Law No. 96–345 (5 U.S.C. 601–612),

requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This rule will not have any economic impact.

## IV. Opportunity for Written Comment

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice to: U.S. Department of Energy, Strategic Petroleum Reserve, Office of Chief Counsel, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734–4312.

Comments (5 copies) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "Guidelines For the Exercise of Limited Arrest Authority and Use of Force by Protective Force Officers of the Strategic Petroleum Reserve, Notice of Proposed Rulemaking." Five copies should be submitted. In the event that any person wishing to submit a written comment cannot provide five copies, alternative arrangements can be made with the Office of Chief Counsel.

All comments received will be available for public inspection in the Project Management Office, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734–4312, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim. This procedure is set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

## List of Subjects in 10 CFR Part 1049

Security measures, Government contracts, Arrest authority, Use of force.

In consideration of the foregoing, it is proposed to add a new part 1049 to chapter X, title 10 of the Code of Federal Regulations, as set forth below:

Issued in Washington, DC on July 25, 1991.

**Linda G. Stuntz,**

*Acting Assistant Secretary, Office of Fossil Energy.*

## PART 1049—LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS OF THE STRATEGIC PETROLEUM RESERVE

Sec.

1049.1 Purpose.
1049.2 Scope.
1049.3 Definitions.
1049.4 Arrest Authority.
1049.5 Exercise of arrest authority—general guidelines.
1049.6 Exercise of arrest authority—use of non-deadly force.
1049.7 Exercise of arrest authority—use of deadly force.
1049.8 Training of SPR Protective Force Officers and Qualification to carry firearms.
1049.9 Firearms and firearms incidents.
1049.10 Disclaimer.

**Authority:** Department of Energy Organization Act, as amended, 42 U.S.C. 7101 *et seq.*

### § 1049.1 Purpose.

The purpose of these guidelines is to set forth internal Department of Energy (DOE) security policies and procedures regarding the exercise of arrest authority and the use of force by DOE employees and DOE contractor and subcontractor employees while discharging their official duties pursuant to section 661 of the Department of Energy Organization Act.

### § 1049.2 Scope.

These guidelines apply to the exercise of arrest authority and the use of force, as authorized by Section 661 of the Department of Energy Organization Act, as amended, 42 U.S.C. 7101 *et seq.*, by employees of DOE and employees of DOE's SPR security contractor and subcontractor. These policies and procedures apply with respect to the protection of:

(a) The SPR and its storage or related facilities; and

(b) Persons upon the SPR or its storage or related facilities.

### § 1049.3 Definitions.

(a) *Act* means sections 661 of the Department of Energy Organization Act, as amended, (42 U.S.C. 7270a).

(b) *Arrest* means an act resulting in the restriction of a person's movement, other than a brief consensual detention for purposes of questioning about a person's identity and requesting identification, accomplished by means of force or show of authority under circumstances that would lead a reasonable person to believe that he was not free to leave the presence of the officer.

(c) *Contractor* means a contractor or subcontractor at any tier.

(d) *Deadly force* means that force which a reasonable person would consider likely to cause death or serious bodily harm.

(e) *Protective Force Officer* means a person designated by DOE to carry firearms pursuant to section 661 of the Act.

(f) *SPR* means the Strategic Petroleum Reserve, its storage or related facilities, and real property subject to the jurisdiction or administration, or in the custody of the Department of Energy under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247).

(g) *Suspect* means a person who is subject to arrest by a Protective Force Officer as provided in these guidelines.

### § 1049.4 Arrest authority.

(a) Under the Act, the authority of a DOE Protective Force Officer to arrest without warrant is to be exercised only in the performance of official duties of protecting the SPR and persons within or upon the SPR.

(b) A Protective Force Officer is authorized to make an arrest for a felony committed in violation of laws of the United States, or for a misdemeanor committed in violation of laws of the United States if the offense is committed in the officer's presence.

(c) A Protective Force Officer also is authorized to make an arrest for a felony committed in violation of laws of the United States if the Officer has reasonable grounds to believe that the felony has been committed, or that the suspect is committing the felony, and is in the immediate area of the felony or is fleeing the immediate area of the felony. "Reasonable grounds to believe" means that the facts and circumstances within the knowledge of the Protective Force Officer at the moment of arrest, and of which the Protective Force Officer has reasonably trustworthy information, would be sufficient to cause a prudent person to believe that the suspect had committed or was committing a felony.

### § 1019.5 Exercise of arrest authority—general guidelines.

(a) In making an arrest, and before taking a person into custody, the Protective Force Officer should:

(1) Announce the Protective Force Officer's authority (*e.g.*, by identifying himself as an SPR Protective Force Officer);

(2) State that the suspect is under arrest; and

(3) Inform the suspect of the crime for which the suspect is being arrested. If the circumstances are such that making these announcements would be useless or dangerous to the Officer or to another person, the Protective Force Officer may dispense with these announcements.

(b) At the time and place of arrest, the Protective Force Officer may search the person arrested for weapons and criminal evidence, and may search the area into which the person arrested might reach to obtain a weapon or to destroy evidence.

(c) After the arrest is effected, the person arrested shall be advised of his constitutional right against self-incrimination ("Miranda warnings"). If the circumstances are such that immediately advising the person arrested of this right would result in imminent danger to the Officer or other persons, the Protective Force Officer may postpone this requirement. The person arrested shall be advised of this right as soon as practicable after the imminent danger has passed.

(d) As soon as practicable after the arrest is effected, custody of the person arrested should be transferred to other Federal law enforcement personnel (*e.g.*, U.S. Marshals or FBI agents) or to local law enforcement personnel, as appropriate, in order to ensure that the person is brought before a magistrate without unnecessary delay.

(e) Ordinarily, the person arrested shall not be questioned or required to sign written statements unless such questioning is:

(1) Necessary to establish the identity of the person arrested and the purpose for which such person is within or upon the SPR;

(2) Necessary to avert an immediate threat to security or safety (*e.g.*, to locate a bomb): or

(3) Authorized by other Federal law enforcement personnel or local law enforcement personnel responsible for investigating the alleged crime.

**§ 1049.6 Exercise of arrest authority—use of nondeadly force.**

(a) When a Protective Force Officer is authorized to make an arrest as provided in the Act, the Protective Force Officer may use only that degree of non-deadly force that is reasonable and necessary to apprehend and arrest the suspect in order to prevent escape or to defend the Protective Force Officer or other persons from what the Officer reasonably believes to be the use or threat of imminent use of non-deadly force by the suspect. Verbal abuse by the suspect, in itself, is not a basis for the use of non-deadly force by a Protective Force Officer under any circumstances.

(b) Protective Force Officers should consult the local DOE Office of Chief Counsel and contractor legal counsel for additional guidance on the use of non-deadly force in the exercise of arrest authority, as appropriate.

**§ 1049.7 Exercise of arrest authority—use of deadly force.**

(a) The use of deadly force is authorized only under exigent circumstances where the Protective Force Officer reasonably believes that such force is necessary to:

(1) Protect himself from an imminent threat of death or from serious bodily harm;

(2) Protect any person or persons in or upon the SPR from an imminent threat of death or serious bodily harm.

(b) If circumstances require the use of a firearm by a Protectived Force Officer, the Officer shall give a verbal warning (*e.g.*, an order to halt), if feasible. A Protective Force Officer shall not fire warning shots under any circumstances.

**§ 1049.8 Training of SPR Protective Force Officers and qualification to carry firearms.**

(a) Protective Force Officers shall successfully complete training required by applicable Department of Energy orders prior to receiving authorization to carry firearms. The Department of Energy Office of Safeguards and Security shall approve the course.

(b) Prior to initial assignment to duty, Protective Force Officers shall successfully complete a basic qualification training course which equips them with at least the minimum level of competence to perform tasks associated with their responsibilities. The basic course shall include the following subject areas:

(1) Legal authority, including use of deadly force and exercise of limited arrest authority;

(2) Security operations, including policies and procedures;

(3) Security tactics, including tactics for Protective Force Officers acting alone or as a group;

(4) Use of firearms, including firearms safety and proficiency with all types of weapons expected to be used:

(5) Use of non-deadly weapons, weaponless self-defense, and physical conditioning:

(6) Use of vehicles, including vehicle safety in routine and emergency situations:

(7) Safety, first aid, and elementary firefighting procedures:

(8) Operating in such a manner as to preserve SPR sites and facilities:

(9) Communications, including methods and procedures.

(c) After completing training, and receiving the appropriate security clearance. Protective Force Officers shall be authorized to carry firearms and exercise limited arrest authority. Protective Force Officers shall receive an identification card, which must be carried whenever on duty and whenever armed.

(d) On an annual basis, each Protective Force Officer must successfully complete training sufficient to maintain at least the minimum level of competency required for the successful performance of all assigned tasks identified for Protective Force Officers.

(e) Protective Force Officers shall be qualified in the use of firearms by demonstrating proficiency in the use of firearms on a semiannual basis prior to receiving authorization to carry firearms. Protective Force Officers shall demonstrate proficiency in the use of all types of weapons expected to be used while on duty under both day and night conditions. In demonstrating firearms proficiency. Protective Force Officers shall use firearms of the same type and barrel length as firearms used by Protective Force Officers while on duty, and the same type of ammunition as that used by Protective Force Officers on duty. Before a Protective Force Officer is qualified in the use of firearms, the Officer shall complete a review of the basic principles of firearms safety.

(f) Protective Force Officers shall be allowed two attempts to qualify in the use of firearms. Protective Force Officers shall qualify in the use of firearms within six months of failing to qualify. If an Officer fails to qualify, the Officer shall complete a remedial firearms training program. A Protective Force Officer who fails to qualify in the use of firearms after completion of a remedial program. and after two further attempts to qualify shall not be authorized to carry firearms or to exercise limited arrest authority.

**§ 1049.9 Firearms and firearms incidents.**

(a) Protective Force Officers shall receive firearms of a type suitable to adequately protect persons and property within or upon the SPR. Firearms and ammunition shall be secured, inventoried, and maintained in accordance with applicable Department of Energy orders, when not in use.

(b) The authority of a Protective Force Officer to carry firearms and to exercise limited arrest authority shall be suspended if the Officer participates in an incident involving the use of

firearms. In such circumstances, the Officer shall be assigned to other duties, pending completion of an investigation.

(c) Incidents involving the discharge of firearms shall be reported to the Department of Energy Headquarters Emergency Operations Center immediately, and to the SPR Project Management Office Security Division within 24 hours. The Strategic Petroleum Reserve Project Manager shall appoint a committee to investigate the incident.

**§ 1049.10 Disclaimer.**

These guidelines are set forth solely for the purpose of internal Department of Energy guidance. These guidelines do not, and are not intended to, and may not be relied upon to, create any substantive or procedural rights enforceable at law by any party in any matter, civil or criminal. These guidelines do not place any limitations on otherwise lawful activities of Protective Force Officers or the Department of Energy.

[FR Doc. 91-18158 Filed 7-31-91; 8:45 am]
BILLING CODE 6450-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91-CE-54-AD]**

### Airworthiness Directives; Aviat (formerly Christen Industries) Christen Model A-1 Husky Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Aviat Christen Model A-1 airplanes. The proposed action would require the replacement of the engine carburetor air intake box. Reports of valve failure on several carburetor air intake boxes that are installed on early models of the affected airplanes have been reported. The actions specified by the proposed AD are intended to prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane.

**DATES:** Comments must be received on or before September 27, 1991.

**ADDRESSES:** Information that is related to this AD may be examined at Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 91-CE-54-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roman Gabrys, Aerospace Engineer, FAA, Denver Aircraft Certification Field Office, 2390 Syracuse Street, Denver, Colorado 80207; telephone (303) 398-0841; facsimile (303) 388-2903.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 91-CE-54-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion:**

Valve failure on several carburetor air intake boxes that are installed on Aviat Christen Model A-1 airplanes have been reported. The valve on these carburetor air intake boxes controls the flow of cold air and warm air to the carburetor. The carburetor air intake box valve on two of the affected airplanes separated from the actuator arm and blocked the airflow into the carburetor. The result of the above incidents was decreased engine power and emergency non-runway landings.

The manufacturer has designed an improved carburetor air intake box for the affected airplanes. After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane.

Since the condition described is likely to exist or develop in other Aviat Christen Model A-1 Husky airplanes of the same type design that are equipped with the same type of carburetor air intake box, the proposed AD would require the replacement of the engine carburetor air intake box with an improved part. The manufacturer, Aviat, would provide these improved carburetor air intake boxes free of charge on an exchange basis.

It is estimated that 45 airplanes in the U.S. registry would be affected by the proposed AD, that it will take approximately 1 hour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts are provided free of charge by the manufacturer on an exchange basis. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,475.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

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

**Aviat (formerly Christen Industries):** Docket No. 91–CE–54–AD.

*Applicability:* Christen Model A–1 Husky airplanes (serial numbers 1001 through 1045), certificated in any category.

*Compliance:* Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane, accomplish the following:

(a) Remove the carburetor air intake box and replace it with a new carburetor air intake box, part number 35453. Reinstall the same bolts and safety wire. Ensure that there is at least a 0.25-inch clearance between the actuating arm and the side of the air intake scoop and that the box and intake screen fit properly at the forward end of the scoop.

**Note:** Carburetor air intake boxes, part number 35453, are available free of charge on an exchange basis from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Field Office, FAA, 2390 Syracuse Street, Denver, Colorado 80207. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Field Office.

(d) All persons affected by this directive may obtain a new carburetor air intake box, part number 35453, on an exchange basis by contacting Aviat, Inc., P.O. Box 1149, Afton, Wyoming 83110; telephone (307) 886–3151. Information that is related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 17, 1991.

**Don C. Jacobsen,**

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

[FR Doc. 91–18240 Filed 7–31–91; 8:45 am]

BILLING CODE 4910–13–M

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### 14 CFR Part 39

**[Docket No. 91–NM–137–AD]**

## Airworthiness Directives; McDonnell Douglas Model DC–9–80 (MD–80) Series Airplanes and Model MD–88 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which currently requires repetitive inspections and functional checks of the tailcone release system for proper operation. This action would require replacement or modification of the external tailcone release system cable and handle assemblies. This proposal is prompted by reports of the tailcone failing to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

**DATES:** Comments must be received no later than September 23, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, attention: Airworthiness Rules Docket No. 91–NM–137–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications & Technical Administration Support, C1–L5B(45–60).

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Andrew Gfrerer, Aerospace Engineer, ANM–131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California, 90806–2425; telephone (213) 988–5338.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–137–AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

On March 1, 1991, the FAA issued AD 91–07–06, amendment 39–6934 (56 FR 11359, March 18, 1991), to require repetitive inspections and functional checks for proper operation of the tailcone release system on McDonnell Douglas Model DC–9–80 series and Model MD–88 airplanes. That action was prompted by reports of discrepancies within the tailcone release system that prevented, or could prevent, the tailcone from releasing from the airplane when actuated. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

Since issuance of that AD, there have been a number of tailcone release handles that have been found broken or cracked. The McDonnell Douglas Corporation and the FAA have investigated this problem and have

determined that the currently-installed external tailcone release system handles cannot adequately support a sideload. A modified handle recently has been developed, the design of which precludes the addressed cracking problems.

The FAA has also received reports of a number of other discrepancies with the tailcone release system, which are currently being evaluated for a possible mandatory corrective action.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991, which describes procedures for replacing or modifying the external tailcone release system cable and handle assemblies.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 91–07–06 with a new airworthiness directive that would continue to require inspections of the tailcone release handles for cracks, and functional testing of the tailcone release system; and would require eventual replacement or modification of the external tailcone release system cable and handle assemblies, in accordance with the service bulletin previously described.

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

There are approximately 870 Model DC–9–80 (MD–80) series airplanes and MD–88 Series Airplanes of the affected design in the worldwide fleet. It is estimated that 500 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish the modification is approximately $1,310 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $778,750.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6934 and by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket No. 91–NM–137–AD. Supersedes AD 91–07–06.

*Applicability:* Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, operating in a passenger or passenger/cargo configuration certificated in any category.

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

**Note:** The requirements of this AD become applicable at the time an airplane in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To confirm proper operation and maintenance, and to prevent failure of the tailcone release system, accomplish the following:

(a) Prior to 12 months in service since new, or within 90 days after March 26, 1991 (the effective date of AD 91–07–06), whichever occurs later, accomplish a tailcone release system functional test and inspection in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–244, Revision 1, dated February 8, 1991.

(b) Discrepancies in the operation of the tailcone release system found as result of the functional test must be repaired prior to further flight.

(c) Repeat the tailcone release system functional test and inspection required by paragraph (a) of this AD at intervals not to exceed 3,500 flight hours or 18 months, whichever occurs first.

(d) Report any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425, within 30 days after discovery. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1990 (Public Law 96–511) and have been assigned OMB Control Number 2120–0056.

(e) Within 9 months after the effective date of this AD, replace or modify the external tailcone release system cable and handle assemblies in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991. Accomplishment of such replacement or modification constitutes terminating action for the repetitive inspection of the interior and exterior tailcone release handles for cracks, as required by paragraph (c) of this AD. However, the repetitive functional checks of the tailcone release system required by paragraph (c) of this AD must continue to be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, attn: Business Unit Manager, Technical Publications, Technical Administration Support, C1–L5B. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on July 23, 1991.

**Darrell M. Pederson,**

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

[FR Doc. 91–18241 Filed 7–31–91; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 29 CFR Part 2510

### Pension Benefit Guaranty Corporation

### 29 CFR Part 2617

### Selection of Annuity Providers for Pension Plans

**AGENCY:** Pension and Welfare Benefits Administration and Pension Benefit Guaranty Corporation, Department of Labor.

**ACTION:** Advance notices of proposed rulemaking, notice of extension of comment periods.

**SUMMARY:** This document extends the comment periods with respect to advance notices of proposed rulemaking under the Employee Retirement Income and Security Act of 1974 (ERISA) relating to the selection of annuity providers by pension plans, published in the **Federal Register** on June 21, 1991, by the Department of Labor (the Department) and the Pension Benefit Guaranty Corporation (PBGC).

**DATES:** The comment periods are extended through September 19, 1991.

**ADDRESSES:** Comments (preferably at least three copies) regarding the advance notice of proposed rulemaking issued by the Department should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: "Annuity Standards Notice." All comments received will be available for public inspection at the Public Documents Room, Pension Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Comments (preferably at least three copies) regarding the advance notice of proposed rulemaking issued by PBGC should be addressed to the Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC, 20006. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100, 2020 K Street NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Regarding the advance notice of proposed rulemaking issued by the Department, Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210; telephone (202) 523–8671; or, regarding the advance notice of proposed rulemaking issued by the PBGC, Angela Arnett, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, Washington, DC 20006; telephone (202) 778–8820 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** On June 21, 1991, the Department issued an advance notice of proposed rulemaking in the **Federal Register** (56 FR 28638) soliciting comments and information concerning whether the Department should publish a proposed regulation under title I of ERISA establishing minimum standards for purposes of determining whether an annuity contract purchased from a particular insurance company serves to relieve a plan of future liability with respect to the participant or beneficiary on whose behalf the annuity is purchased. On the same date, the PBGC issued an advance notice of proposed rulemaking in the **Federal Register** (56 FR 28642) soliciting comments and information concerning possible regulatory action by the PBGC that would apply to the selection by pension plan administrators of annuity providers as part of the plan termination process under title IV of ERISA. In the notices, the agencies invited all interested persons to submit written comments concerning the notices on or before August 20, 1991.

The agencies have received a request from the American Council of Life Insurance (ACLI) for an additional thirty days to prepare comments. The ACLI states that such time is necessary to adequately consider the large number of significant issues affecting the insurance industry, as well as to prepare an economic impact analysis. The agencies believe that it is appropriate to grant the requested extension. Accordingly, this notice extends through September 19, 1991, the comment periods during which comments on the advance notices of proposed rulemaking will be received.

### Notice of Extension of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the above cited advance notices of proposed rulemaking (published at 56 FR 28638 and 56 FR 28642 on June 21, 1991) is hereby extended through Thursday, September 19, 1991.

Signed at Washington, DC, this 26th day of July 1991.

**David George Ball,**

*Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.*

**James B. Lockhart III,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 91–18288 Filed 7–31–91; 8:45 am]

BILLING CODE 4510–29–M

## POSTAL SERVICE

### 39 CFR Part 111

### Mailability of Sharps and Unsterilized Containers and Devices

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service is proposing to amend its regulations to require that sharps and unsterilized containers as described in Environmental Protection Agency rules (see item (4) in the table entitled "Regulated Medical Waste" included in 40 CFR 259.30a) be sent as registered First-Class Mail or registered Priority Mail, with return receipt requested service.

The Postal Service is also proposing that, effective 90 days after publishing its final rule, sharps and unsterilized containers must be packaged with a primary container that is securely sealed, leak resistant, and puncture resistant. The primary container must be enclosed in a secondary sealed, watertight container. Each primary and secondary container (or sets of primary containers in a secondary container) must be enclosed in a shipping container constructed of 275-pound grade fiberboard or similar material of equivalent strength. Enough absorbent material must be encased in the primary and secondary containers to absorb the entire liquid contents of the primary container in case of breakage or leakage. The total liquid volume of the primary and secondary containers or set of primary containers in a secondary container may not exceed 50 ml., and there will be a maximum weight limit of 25 pounds for each mailed parcel.

**DATES:** Comments must be received on or before September 3, 1991.

**ADDRESSES:** Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Marketing and Customer Service Group, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5903 Copies of all written comments will be available for

inspection and photo copying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Earl B. Hohbein, (202) 268–5309.

**SUPPLEMENTARY INFORMATION:** While the risk, at this time, appears low, the potentially serious consequences of infection acquired from mailed medical sharps requires that the Postal Service take every reasonable precaution to prevent customer and employee exposure to the hazard. The majority of parcels that contain sharps or unsterilized containers are mailed at the fourth-class rates of postage and, therefore, are processed through the mechanical parcel sorting systems in the Postal Service's bulk mail centers. Sometimes parcels break open or leak during this mechanical processing operation.

It is expected that requiring sharps and unsterilized containers to be sent as registered First-Class Mail or registered Priority Mail, with return receipt requested service, will reduce or eliminate potential employee exposure to leaking or broken mailed medical sharp containers. Taking these parcels out of the fourth-class mechanical processing mailstream will reduce mechanized handling, and limit the likelihood of breakage or leakage. Since these First-Class or Priority parcels will be in the registered mail network, there will be proof of delivery of the parcels and an automatic tracking system. By requiring these parcels to be registered, the mailpieces would remain under tight control and be stored and handled in specific locations.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)) regarding proposed rulemaking by 39 U.S.C. 420(a), the Postal Service invites public comments on the following proposed amendments of Part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal service.

**Part 111—[AMENDED]**

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

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend § 124.3 by adding new § 124.384 (c), (d), and (e) to read as follows:

124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

* * * * *

**.38 Disease Germs and Biological Products**

* * * * *

.384 Sharps and Unsterilized Containers

* * * * *

c. A mailed parcel containing the types of materials in 124.384a is nonmailable unless it bears the "Etiologic Agents/Biohazard Products-Biohazard" label, required by 42 CFR 72.3d, and is sent by registered First-Class Mail or registered Priority Mail, with return receipt requested service.

d. Effective October 30, 1991 sharps and unsterilized containers as further described in item (4) in the table following 40 CFR 259.30a, and unsterilized containers and devices used in laboratory or surgical procedures, are nonmailable except when packaged and marked as specified in the following paragraphs.

(1) Sharps, unsterilized containers or devices must meet the packaging requirements listed below and as required by 42 CFR 72.3a.

(2) The material must be packaged in a securely sealed, leak resistant and puncture resistant primary container enclosed in a second sealed and watertight, durable container (secondary container). Several primary containers may be enclosed in a secondary container if there is adequate shock-absorbent material between them to prevent breakage during ordinary handling in transit and processing and if the total liquid volume of all the enclosed primary containers does not exceed 50 ml.

(3) The space at the top, bottom, and sides between the primary and secondary containers must contain sufficient absorbent material to absorb the entire contents of the primary containers in case of leakage.

(4) Each set of primary and secondary containers must be enclosed in an outer shipping container constructed of 275-pound grade fiberboard or similar material of equivalent strength.

(5) Each parcel containing sharps and other unsterilized containers must not weigh more than 25 pounds.

(6) Each package as prepared for mailing must be designed and constructed so that, if it were subjected to the environmental and test conditions prescribed in 49 CFR 178.609, there would be no release of the contents to the environment, and no significant reduction in the effectiveness of the packaging.

e. Full responsibility rests with the mailer for any violation of section 1716 of title 18, United States Code, which may result from placing these items in the mail. Until further notice, a copy of all Forms 1770, Hazardous Materials Incident Report, involving sharps and unsterilized containers packaging should be furnished to the Business Requirements Division, Office of Classification and Rates Administration.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 91–18155 Filed 7–31–91; 8:45 am]

BILLING CODE 7710–12–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 91–219, RM–7729]**

## Radio Broadcasting Services; Brillion, WI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Brillion Radio Company proposing the substitution of Channel 298C3 for Channel 298A, Brillion, Wisconsin, and modification of the construction permit for Station WEZR(FM) to specify operation on the higher class channel. The construction permit for Station WEZR(FM), Channel 242A, was modified in MM Docket No. 89–282 to specify operation on Channel 298A. See 56 FR 23663, May 23, 1991. The coordinates for Channel 298C3 are 44–19–10 and 87–57–30. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Brillion or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

**DATES:** Comments must be filed on or before September 16, 1991, and reply comments on or before October 1, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle R. Evans,

Brillion Radio Company, 1296 Marian Lane, Green Bay, Wisconsin 54304.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.91–219 adopted July 8, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 91–18152 Filed 7–31–91; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 73

**[MM Docket No. 91–220, RM–7746]**

## Radio Broadcasting Services; Bishop, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Cismek Corporation ("petitioner"), licensee of Station KFLZ(FM), Channel 296A, Bishop, Texas, seeking the substitution of Channel 299C3 for Channel 296A at Bishop, Texas, and the modification of its license accordingly. Channel 299C3 can be allotted to Bishop in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) northeast to accommodate petitioner's desired transmitter site. The coordinates for Channel 299C3 at Bishop are North Latitude 27–38–27 and West Longitude 97–43–33. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 299C3 at Bishop or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Mexican concurrence will be requested for this proposal.

**DATES:** Comments must be filed on or before September 16, 1991, and reply comments on or before October 1, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joe Cisneros, 110 East Main Street, Bishop, Texas 78343 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–220, adopted July 8, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 91–18151 Filed 7–31–91; 8:45 am]

BILLING CODE 6712–01–M

## INTERSTATE COMMERCE COMMISSION

## 49 CFR Part 1037

**[Ex Parte No. 502]**

## Bulk Grain and Grain Products; Loss and Damage Claims

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commission is considering revocation of the part 1037 regulations because they no longer appear to serve a useful purpose. The Commission is seeking comment from interested persons before deciding to institute a proceeding.

**DATES:** Comments are due by September 16, 1991.

**ADDRESSES:** Send an original and 10 copies of all comments to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 502, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

**SUPPLEMENTARY INFORMATION:** Part 1037, Rules for the Handling of Bulk Grain and Grain Products in Interstate Commerce, and the Filing, Investigation, and Disposition of Claims for Loss and Damage Incident Thereto, Which Supersede the Rules Prescribed in Ex Parte No. 263, Loss and Damage Claims, 340 I.C.C. 515 (37 FR 20943), is an adjunct to the Commission's general loss and damage rules at 49 CFR part 1005. The part 1037 regulations apply only to bulk grain and grain products and only to matters not covered by the part 1005 regulations.

The part 1005 regulations contain the procedural mechanisms for handling loss and damage claims (*e.g.*, the procedures for filing, acknowledging,

investigating, and disposing of claims). They are generally applicable to the disposition by regulated carriers of all freight related claims, whether or not they involve bulk grain and grain products. The part 1037 regulations center upon matters relating to the weighing of grain and grain products at origin and destination points. They apply to "shipments of bulk grain and grain products transported solely in railroad-owned and railroad-leased cars" [§ 1037.2(b)], and set forth various circumstances that establish "*prima facie* that the loss occurred in transit and that the railroad is liable" [§ 1037.1(e)]]

In 1974, when the part 1037 regulations were adopted, bulk grain and grain products moved primarily in boxcars. Loss of lading frequently occurred in transit resulting in numerous loss and damage claims. Because these claims were not uniformly handled and settled by the railroads, the part 1037 regulations were adopted. *Loss and Damage Claims*, 346 I.C.C. 33, 60 (1974).

Since grain and grain products now move primarily by covered hopper car, it appears that the part 1037 regulations may no longer play a significant role in the handling of loss and damage claims. Casting further doubt on the usefulness of the regulations is the decision in *Continental Grain Co.* v. *Frank Seitzinger Storage*, 837 F. 2d 836, 840 (8th Cir. 1988). There the Eighth Circuit found 1037.1 applicable only to the voluntary settlement of claims and "not applicable in civil litigation to recover the value of property lost in transit."

Interested persons are invited to comment on whether the part 1037 regulations presently serve any useful purpose and whether they should be revoked, retained, or retained with modifications.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects in 49 CFR Part 1037**

Claims, Grains, Railroads.

Authority: 49 U.S.C. 12, 16, and 10321.

*Decided:* July 24, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons was absent and did not participate in the disposition of this proceeding.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 91-18245 Filed 7-31-91; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Critical Habitat Designation for the Lower Keys Population of the Rice Rat (Silver Rice Rat)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The Service announces its intention to propose critical habitat for the endangered Lower Keys population of the rice rat, or silver rice rat (Oryzomys palustris natator (=Oryzomys argentatus)), a small mammal found in Monroe County, Florida.

**DATES:** The Service anticipates that a critical habitat proposal will be published in the **Federal Register** by September 30, 1991. The proposed rule will provide for a 60-day comment period.

**ADDRESSES:** U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

**SUPPLEMENTARY INFORMATION:**

### Background

In a final rule published April 30, 1991 (56 FR 19809), the Service classified the Lower Keys population of the rice rat as endangered, but critical habitat designation was considered to be not prudent at the time of listing. The "not prudent" determination was based on the perception that publication of precise locations for the species would increase enforcement problems and expose the species to undesirable collecting and other human-related disturbances or threats, placing its survival in further jeopardy.

Since publication of the final rule, the Service has given further consideration to its decision regarding critical habitat designation. Section 7 of the Endangered Species Act of 1973, as amended, requires all Federal agencies to insure that any action that they authorize, fund or carry out is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat. The presence of the rice rat on Federal land and other lands subject to Federal involvement, and the potential for further habitat loss due to Federal actions, suggest that critical habitat designation for the rice rat may be prudent despite the potential for increasing the other threats noted above.

In determining what areas are critical habitat, the Service will consider those physical and biological features that are essential to the conservation of the rice rat and may require special management considerations for protection. This will include the rice rat's requirements for space, food, water, cover or shelter, reproduction and population growth. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Service will be seeking comments and data from the public as part of the proposed rule for designating critical habitat for the rice rat.

### Author

The primary author of this notice is Dr. Michael M. Bentzien (see **ADDRESSES** section).

### Authority

The authority for this notice is the Endangered Species Act (16 U.S.C. 1531-1544).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 26, 1991.

**Richard N. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 91-18222 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 217 and 227

**[Docket No. 910775-1175]**

## Sea Turtle Conservation; Shrimp Trawling Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to impose the present May 1 through August 31 seasonal sea turtle conservation requirements for shrimp trawlers off the southeastern U.S. Atlantic coastal states for the September 1, 1991 through April 30, 1992 off season. Under the proposed

rule, shrimp trawlers 25 feet (7.6 meters (m)) or longer in length, trawling in offshore waters from North Carolina through Florida (NMFS statistical zones 24–36) would have to use NMFS-approved turtle excluder devices (TEDs) in their nets during the 1991–1992 off season, and shrimp trawlers of all sizes trawling in inshore waters and vessels less than 25 feet (7.6 m) in length trawling in offshore waters would either have to restrict their tow times to 90 minutes or use NMFS-approved TEDs during the 1991–1992 off season. Under the present regulations these restrictions apply only from May 1 through August 31 of each year.

This rule is being proposed because of a significant risk to the well-being of endangered and threatened sea turtles because of the seasonal nature of the present requirements. The intended effect is to reduce the mortality of turtles taken incidental to shrimp trawl fishing between September 1, 1991 and April 30, 1992, when the measures to conserve sea turtles would otherwise not be in effect in waters off North Carolina through the Atlantic coast of Florida.

**DATES:** Written comments will be accepted until August 16, 1991.

**ADDRESSES:** Comments on this rule should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Phil Williams (301–427–2322) or Charles Oravetz (813–893–3366).

**SUPPLEMENTARY INFORMATION:**

## Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for loggerhead, Kemp's ridley, green, leatherback, and hawksbill turtles in coastal waters of the southeastern United States and Gulf of Mexico. NMFS estimated that, prior to 1987, commercial shrimp trawlers killed at least 11,000 sea turtles annually in waters off the south Atlantic and Gulf of Mexico states (Henwood and Stuntz, 1987). A more recent review of existing information by the National Academy of Sciences (NAS, 1990) found that the NMFS estimates were conservative, and that the number of turtles killed by shrimp trawlers could be as high as 55,000 each year.

NMFS issued regulations on June 29, 1987 (52 FR 24244), that require shrimp trawlers to comply with certain conservation measures to reduce sea turtle mortalities. Those regulations, hereinafter referred to as the sea turtle conservation regulations, require shrimp trawlers to use NMFS-approved TEDs or restrict their tow times in specific areas at certain times of the year. These regulations appear in 50 CFR parts 217, 222, and 227.

## Effect of Seasonal Conservation Requirements in the Atlantic Area

Since the sea turtle conservation regulations have been in effect, evidence suggests that sea turtle mortalities associated with shrimp trawling have been significantly reduced. The current regulations, however, do not require use of TEDs or restrict tow times at all times in all areas. When TEDs or restricted tow times are not used, sea turtle mortalities are likely wherever trawling activities occur and sea turtles are present.

The current sea turtle conservation regulations require vessels 25 feet (7.6 m) or longer trawling for shrimp in offshore Atlantic waters of North Carolina, South Carolina, Georgia, and Florida to use TEDs from May 1 through August 31. Vessels 25 feet (7.6 m) or longer trawling for shrimp in the Cape Canaveral Area of Florida are required to use TEDs year-round. For Atlantic Area inshore waters, vessels are required to restrict tow times to 90 minutes or use TEDs from May 1 through August 31 each year.

NMFS recently estimated annual turtle captures and mortalities by shrimp trawlers under the existing sea turtle conservation regulations assuming 100 percent compliance and 100 percent mortality of all comatose turtles recovered (Henwood, *et al.*, 1990). NMFS estimates that in the Atlantic Area offshore fishery, 2,204 sea turtles are killed annually in shrimp trawls. Of these, 2,126 are estimated to be killed in shrimp trawls during the months of September through April, when TEDs or restricted tow times are not required. NMFS also estimated that 996 turtles are killed in shrimp trawls in inshore Atlantic waters under the 90-minute tow time requirement and present seasonality of the conservation requirements. Thus, assuming 100 percent compliance with the regulations, and 100 percent mortality of comatose turtles recovered, an estimated 3,200 turtles are killed annually in U.S. Atlantic shrimp trawl fisheries under implementation of the current sea turtle conservation regulations. It should be noted, however, that enforcement of the sea turtle conservation regulations indicates less than 100 percent compliance.

Studies and recent events show a strong correlation between sea turtle mortality and shrimp and other bottom trawling effort along the Atlantic coast For instance, high levels of turtle strandings in the fall and spring when TEDs or restricted tow times are not required have consistently been reported from North Carolina, South Carolina, Georgia and Florida.

Murphy and Hopkins-Murphy (1989) found that the total number of sea turtle strandings in South Carolina after the opening of the shrimping season was five times as larger than the number of strandings prior to the opening of the season. The increase in the number of strandings was correlated to the fishery, rather than to yearly and seasonal fluctuations, because the data came from openings and closings on different dates in different years. Although this does not demonstrate a causal relationship, the correlation of large increases in strandings after the opening of the shrimping season year after year strongly suggests that shrimp trawling is responsible for the increased turtle mortality.

Sea turtle stranding data from North Carolina also show a pattern that closely tracks the State's offshore trawl fisheries. Sea turtle strandings increase in summer south of Cape Hatteras (Cape) when the shrimp fleet is active (Street, 1987). South of the Cape, 86 percent of the strandings during 1980–1986 occurred in areas where shrimp trawling took place from May through September. This suggests that shrimp trawls were the primary cause of strandings.

Between October 1 and December 31, 1988, 171 dead turtles washed ashore in Georgia and Florida, during a period of heavy shrimping activity. This record number of strandings led to NMFS' issuing emergency regulations requiring the use of TEDs in the Atlantic inshore and offshore waters of southern Georgia and Florida in statistical zones 29 and 30 (54 FR 7773, Feb. 23, 1989). At that time, record numbers of Kemp's ridley turtles (70) and significant numbers of loggerhead and leatherback turtles stranded along the coastal beaches. These strandings were much more numerous than in the same area in 1987. The increased number of strandings was shown to coincide with an increased level of shrimp trawling (Schroeder and Maley, 1989).

In April 1991, 93 sea turtles were reported stranded in Georgia just prior to the May 1 annual start of the Federal sea turtle conservation requirements. Thirty strandings were reported in Georgia from May 1–May 17, and most

of the carcasses were in an advanced state of decomposition, indicating the sea turtles died prior to May 1.

### Actions by Atlantic States

Florida, Georgia, and South Carolina have adopted regulations that are at least as restrictive as the Federal sea turtle conservation regulations. Florida requires TEDs year-round in all State waters on most trawls, and Georgia requires use of TEDs from April through December in waters south of 31°20' N. latitude. South Carolina regulations are patterned after Federal regulations, except that TEDs are required in certain inshore areas where the 90-minute tow time would apply under the Federal requirements.

Directors of the State resource management agencies in Florida, Georgia and South Carolina have repeatedly requested that NMFS revise the sea turtle conservation regulations to expand the duration of the conservation requirements. These agencies, which enforce State sea turtle conservation regulations, have requested that NMFS expand the conservation measures beyond the May 1 to August 31 annual season.

### Proposed Rule

NMFS proposes to require all shrimp trawlers with vessels 25 feet (7.6 m) or longer, except those fishing for rock shrimp or royal red shrimp, to use NMFS-approved TEDs while shrimping from September 1, 1991 through April 30, 1992 in the offshore Atlantic Area as defined in the sea turtle conservation regulations. Shrimp trawlers in inshore waters or with vessels less than 25 feet (7.6 m) in length not using a NMFS-approved TED in each net, would be required to limit each tow time to 90 minutes during this period in the Atlantic Area. The restrictions for the period May 1 through August 31 of each year would be unaffected by this rule.

NMFS prepared a supplemental regulatory impact review for this proposed rule which concluded that, if adopted, it would not have a significant economic impact on the Atlantic commercial shrimp trawling industry. Shrimpers in the Atlantic Area are currently required to use TEDs or restricted tow times under the 1987 sea turtle conservation regulations from May 1 through August 31, except in the Cape Canaveral Area. Thus shrimpers already have the necessary gear purchased and installed in their nets, and they are familiar with the requirements of the regulations. Further the proposed regulation would not change the number of shrimp trawlers affected by these conservation requirements.

Because shrimpers required to use TEDs under the current regulations have already purchased them, the only additional associated costs will be replacement of used TEDs and any loss in shrimp catch resulting from TED use. NMFS has assumed that the TEDs may be used for two years (NMFS, 1987a). The two year life takes into consideration the probability of losing a net and hence a TED when it is still serviceable. It also takes into account TED repair cost.

Thus, the costs to shrimpers of this proposed action will likely increase somewhat because of the cost associated with replacing TEDs that will be used year round rather than from only May 1 through August 31. NMFS has estimated that approximately 10,695 TEDs (including spares) are used by 2,992 shrimp trawlers in the Atlantic Area under the current regulations (NMFS, 1987a). NMFS has estimated that the increase in annual operating costs to shrimp trawlers to install and use TEDs is between .1 and 18.2 percent, with the largest percentage increases being borne by small trawlers with relatively low operating costs.

Changes in shrimp catch by individual shrimpers are difficult to predict. They are affected by the type of TED used, season fished, area fished, and the skill of the fisher. In promulgating the 1987 sea turtle conservation regulations, NMFS estimated a range in catch loss by shrimp trawlers of zero to 5 percent. This was based on extensive testing of the NMFS TED and limited testing of other TEDs.

NMFS estimated that the annual gross revenue for a shrimp trawler was between $25,414 and $173,072. A 5 percent loss in shrimp catch would result in a loss in annual gross revenue ranging from $1,271 to $8,654 (NMFS, 1987a). Recently NMFS completed a study in cooperation with the shrimp industry to determine the impacts of using a NMFS-approved TED on commercial shrimp trawlers operating in the U.S. Atlantic and Gulf of Mexico. The results of this study will be used in a comprehensive economic analysis of the impact of TEDs on the shrimp industry. However, the results of comparisons of standard and TED-equipped nets demonstrated a 0.7 percent loss by the TED-equipped nets (Renaud, *et al.*, 1990), thereby lowering the annual 1987 estimated loss in revenue by over 80 percent.

NMFS is prepared to find that the present situation poses a significant risk to the well-being of endangered and threatened sea turtles in the waters of the Atlantic Area, and those participating in the fishery already use NMFS-approved TEDs, and they will not have to purchase new TEDs in order to comply, that there is good cause to make this rule effective as of September 1 without a 30-day delay in effective date as is otherwise required under section 553(d) of the Administrative Procedure Act.

### Future Actions By NMFS

NMFS is considering the proposal of two sets of regulations to amend the sea turtle conservation regulations. The first would make revisions in order to facilitate enforcement. The second would expand the conservation requirements and impose additional ones. In the context of the second, NMFS is considering making the May 1 through August 31 seasonal requirements in the Atlantic Area applicable year round rather than just for the September 1, 1991 through April 30, 1992 period here proposed. The reason NMFS did not here propose year round applicability was that the need for a September 1, 1991 effective date did not allow for a long public comment period. It is NMFS' intention to allow significant periods for public comment on its future sea turtle conservation regulatory actions.

### Classification

The Assistant Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The basic regulations which this rule would amend were determined not to be major.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The rule extends for the 1991–1992 off season the May 1 through August 31 seasonal requirement for TEDs and restricted tow times. The net effect is to reduce the incidental capture and mortality of sea turtles associated with shrimp trawling. The costs of implementing these provisions are considered minor in relation to the costs that were discussed in the regulatory impact review/regulatory flexibility analysis of the sea turtle conservation regulations (NMFS, 1987a). Consequently, a regulatory flexibility analysis was not prepared for this proposed rule.

An environmental impact statement (EIS) (NMFS, 1978) prepared for the listing of three species of sea turtles, the

green, loggerhead, and olive ridley, also addressed the development of gear and procedures to reduce the incidental take and mortality of sea turtles in shrimp trawls. An environmental assessment that described a voluntary program to encourage the use of TEDs was prepared in 1983. A supplemental EIS covering the mandatory TED and tow-time requirements was prepared in 1987 (NMFS, 1987b). This rule would extend the requirements for TED use and restricted tow times in the southeastern Atlantic Area for the 1991–1992 off season and will not result in a significant change in the environmental impact statements previously prepared for the TED requirements and, thus, is categorically excluded by NOAA Directive 02–10 from the requirement to prepare an environmental assessment.

In the final rule that implemented the sea turtle conservation regulations (52 FR 24244, June 29, 1987), NOAA concluded that, to the maximum extent practicable, the regulations were consistent with the coastal zone management programs of each of the southeastern states that has an approved program under the Coastal Zone Management Act. Since this rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the initial consistency determination, a new consistency determination is not required. Neither this rule nor the ESA precludes any state from adopting more stringent sea turtle protection measures.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

### References


Henwood, T.A., W.E. Stuntz, and N.B. Thompson. 1991. Preliminary evaluation of U.S. turtle protective measures under existing TED regulations. Unpublished Document.

Henwood, T.A., and W.E. Stuntz. 1987. Analysis of sea turtle captures and mortalities during commercial shrimp trawling. Fish Bulletin. 85:813–817.

Murphy, T.M., and S.R. Hopkins-Murphy. 1989. Sea Turtle and Shrimp Fishing Interactions: A Summary and Critique of Relevant Information. Washington, DC: Center for Marine Conservation. 60 pp.

National Academy of Sciences, National Research Council. 1990. Decline of the Sea Turtles: Causes and Prevention. Washington, DC National Academy Press. 189 pp.

National Marine Fisheries Service. 1987a. Regulatory impact review and regulatory flexibility analysis for regulations which require the use of turtle excluder devices by shrimpers to conserve sea turtles. 24 pp. IN: Draft supplement to the final environmental impact statement on listing and protecting the green turtle, loggerhead sea turtle, and pacific ridley sea turtle under the Endangered Species Act of 1973 and regulatory impact review and regulatory flexibility analysis for regulations which require the use of turtle excluder devices by shrimpers to conserve sea turtles. February 1987.

National Marine Fisheries Service. 1987b. Final supplement to the final environmental impact statement on listing and protecting the green turtle, loggerhead sea turtle, and pacific ridley sea turtle under the Endangered Species Act of 1973. June 1987.

National Marine Fisheries Service. 1978. Final environmental impact statement on listing and protecting the green turtle *(Cheloni a mydas)*, loggerhead sea turtle *(Caretta caretta)*, and pacific ridley sea turtle *(Lepidochelys olivacea)* under the Endangered Species Act of 1973. 144 pp. July 1978.

Schroeder, B.A., and C.A. Maley. 1989. 1988 fall/winters strandings of marine turtles along the northeast Florida and Georgia coasts. Pp. 159–161 in Proceedings of the Ninth Annual Workshop on Sea Turtle Conservation and Biology held 7–11 February, 1989 at Jekyll Island, Georgia, S.A. Eckert, and T.H. Richardson, comp. NOAATM–NMFS–SEFC–232. Miami, Fla.: Southeast Fisheries Center, National Marine Fisheries Service.

Street, M.W. 1987. Evaluation of Reported Sea Turtle Strandings and Shrimp Trawl Data for North Carolina. Report No. 166. Raleigh: Division of Marine Fisheries, North Carolina Department of Natural Resources and Community Development.


### List of Subjects in 50 CFR Parts 217 and 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: July 26, 1991.

**William W. Fox, Jr.,**

*Assistant Administrator for Fisheries.*

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are proposed to be amended as follows:

## PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1521–1543; and 16 U.S.C. 742a *et seq.*

**§ 217.12 [Amended]**

2. In § 217.12, in the definition for *"Atlantic Area"*, the phrase "36°33'00.8' N. latitude (North Carolina or Virginia border)" is revised to read "36°33'00.8" N. latitude (North Carolina/Virginia border)."

## PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

**Authority:** 16 U.S.C. 2531 *et seq.*

4. In § 227.72, Maps 1 through 4 are removed; and paragraphs (e)(2)(i), (e)(3)(i), and (e)(3)(ii) and Tables 1 and 2 are revised to read as follows:

**§ 227.72 Exceptions to prohibitions.**

* * * * *

(e) * * *

(2) * * *

(i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet (7.6 meters) or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(3) * * *

(i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year.

(*2*) Atlantic Area, inshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year.

(*2*) Gulf Area inshore—March 1 through November 30, each year.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet (7.6 meters) in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during

periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

TABLE 1.—WATERS WHERE TEDS ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET (7.6 METERS) OR LONGER IN LENGTH

| Area | Season |
|---|---|
| Atlantic Ocean: | |
| Canaveral Area—offshore | All year. |
| Atlantic Area—offshore | Sept. 1, 1991–Apr. 30, 1992; May 1–Aug. 31, each year. |

TABLE 1.—WATERS WHERE TEDS ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET (7.6 METERS) OR LONGER IN LENGTH—Continued

| Area | Season |
|---|---|
| Gulf of Mexico: | |
| Southwest Florida Area—offshore. | All year. |
| Gulf Area—offshore | Mar. 1–Nov. 30, each year. |

TABLE 2.—90-MINUTE TOW TIMES [1]

| Area | Season | Vessel sizes |
|---|---|---|
| Atlantic Ocean: | | |
| Canaveral Area—inshore. | All year | All. |
| Atlantic Area—inshore. | Sept. 1, 1991–April 30, 1992; May 1–Aug. 31, each year. | All. |
| Gulf of Mexico: | | |
| Southwest Florida Area—inshore. | All year | All. |
| Gulf Area—inshore. | Mar. 1–Nov. 1, each year. | All. |
| Atlantic Ocean: | | |
| Canaveral Area—offshore. | All year | <25 ft. (7.6 m). |
| Atlantic Area—offshore. | Sept. 1, 1991–Apr. 30, 1992; May 1–Aug. 31, each year. | <25 ft. (7.6 m). |
| Gulf of Mexico: | | |
| Southwest Florida Area—offshore. | All year | <25 ft. (7.6 m). |
| Gulf Area—offshore. | Mar. 1–Nov. 30, each year. | <25 ft. (7.6 m). |

[1] Tow time restrictions do not apply to shrimp trawlers using a qualified TED in each net during trawling.

* * * * *

[FR Doc. 91-18131 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

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

### Forms Under Review by Office of Management and Budget

July 26, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

**Revision**

• Farmers Home Administration
7 CFR 1942–K, Emergency Community Water Assistance Grants
FmHA 1942–31
On occasion
State or local governments; Non-profit institutions; Small businesses or organizations; 1,470 responses; 2,940 hours
Jack Holston (202) 382–9736

**New Collection**

• Agricultural Research Service
Record of Shipment/Release of Exotic Microorganisms for Biological Control
AD–944 and –944A
On occasion
State or local governments; Federal agencies or employees; 420 responses; 105 hours
Jack R. Coulson (301) 344–1748

**Extension**

• Agricultural Marketing Service
Navel Oranges Grown in Arizona and Designated Parts of California—M.O. No. 907
Recordkeeping; On occasion; Weekly; Annually; Daily
Farms; Businesses or other for-profit; Small businesses or organizations; 210,486 responses; 25,232 hours
Beatriz Rodriguez (202) 475–3861

**Existing**

• Food and Nutrition Service
State Options Contract (SOC) Program
Recordkeeping; On occasion; Annually
State or local governments; 20 responses; 40 hours
Ron Johnson (703) 756–3888

**Donald E. Hulcher,**
*Deputy Departmental Clearance Officer.*

[FR Doc. 91–18209 Filed 7–31–91; 8:45 am]
BILLING CODE 3410–01–M

## Federal Grain Inspection Service

### Designation of Denver Grain Inspection, Inc. (Denver)

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Service announces the designation of Denver Grain Inspection, Inc., dba Denver Grain Inspection (Denver), to provide official services under the United States Grain Standards Act, as amended (Act).

**EFFECTIVE DATE:** September 1, 1991.

**ADDRESSES:** Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8 1991, **Federal Register** (56 FR 9933), the Service announced that the designation of Hutchings, Inc., dba Denver Grain Inspection (Denver) will terminate on August 31, 1991, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were to be postmarked by April 8, 1991.

Randy J. McCormick, proposing to incorporate as Denver Grain Inspection, Inc. and do business as Denver Grain Inspection, the only applicant, applied for the entire Denver area as described in the March 8 **Federal Register.**

The Service named and requested comments on the applicant for designation in the May 1, 1991, **Federal Register** (56 FR 19978). Comments were to be postmarked by June 17, 1991. The Service received three favorable comments from grain firms in the Denver geographic area by that deadline.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Denver Grain Inspection, Inc., is able to provide official services in the geographic area for which they applied.

Effective September 1, 1991, and terminating August 31, 1994, Denver Grain Inspection, Inc., is designated to provide official grain inspection services in the geographic area specified in the March 8 **Federal Register.**

Interested persons may obtain official services by contacting Denver at 317-289-1206.

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

Dated: July 22, 1991.

**J. T. Abshier,**
*Director, Compliance Division.*

[FR Doc. 91–18097 Filed 7–31–91; 8:45 am]
BILLING CODE 3410–EN–F

## Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Idaho (ID) and Lewiston (ID) Agencies, and the State of Utah (UT)

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Service requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Idaho Grain Inspection Service, Inc. (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and the Utah Department of Agriculture (Utah).

**DATES:** Comments must be postmarked on or before September 16, 1991.

**ADDRESSES:** Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 30, 1991, **Federal Register** (56 FR 24366), the Service asked persons interested in providing official services within the Idaho, Lewiston, and Utah geographic areas to submit an application for designation. Applications were to be postmarked by July 1, 1991. Idaho, Lewiston, and Utah, the only applicants, each applied for the entire area currently assigned to them.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

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

Dated: July 22, 1991.

**J. T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 91-18094 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

## Request for Comments on the Applicants for Designation to Provide Official Services in Portions of Illinois (IL) and Indiana (IN)

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Service requests interested persons to submit comments on the applicants for designation to provide official services in portions of Illinois and Indiana.

**DATES:** Comments must be postmarked on or before September 16, 1991.

**ADDRESSES:** Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 30, 1991, **Federal Register** (56 FR 24366), the Service asked persons interested in providing official services within portions of Illinois and Indiana to submit an application for designation. Applications were to be postmarked by July 1, 1991. There were three applicants; Schneider Inspection Service, Inc. (Schneider), Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), and Kankakee Grain Inspection, Inc. (Kankakee). Schneider and Kankakee applied for the entire available area and Eastern Iowa applied for all or any portion of the area. Each is a neighboring official agency.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

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

Dated: July 22, 1991.

**J. T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 91-18095 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

## Designation of East Indiana (IN) and the State of Kansas (KS)

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Service announces the designation of East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas), to provide official grain inspection services under the United States Grain Standards Act, as amended (Act).

**EFFECTIVE DATE:** September 1, 1991.

**ADDRESSES:** Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 1991, **Federal Register** (56 FR 9933), the Service announced that the designations of East Indiana and

Kansas will terminate on August 31, 1991, and asked persons interested in providing official services within a specified geographic area to submit an application for designation. Applications were to be postmarked by April 8, 1991.

East Indiana and Kansas, the only applicants, each applied for the entire area currently assigned to them.

The Service named and requested comments on the applicants for designation in the May 1, 1991, **Federal Register** (56 FR 19978). Comments were to be postmarked by June 17, 1991. The Service received two comments on Kansas; one from a trade group pleased with the service provided by Kansas, and one from a grain firm expressing concern with the level of Kansas' inspection fees. The Service received one comment on East Indiana, from a grain firm expressing concern over the timeliness of service.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that East Indiana and Kansas are able to provide official services in the geographic areas for which they applied.

Effective September 1, 1991, and terminating August 31, 1994, East Indiana and Kansas are designated to provide official grain inspection services in the geographic areas specified in the March 8 **Federal Register**.

Interested persons may obtain official services by contacting East Indiana at 317-289-1206 and Kansas at 913-296-3451.

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

Dated: July 22, 1991.

**J. T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 91-18098 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

## Cancellation of the Grand Forks (ND) Agency's Designation and Request for Designation Applications

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Robert J. Bohlman dba Grand Forks Grain Inspection Department (Grand Forks) asked the Service to cancel his designation, effective January 31, 1992. The Service asks persons interested in providing official services in the geographic area presently assigned to Grand Forks to submit an application for designation.

**DATES:** Applications must be postmarked on or before September 3, 1991.

**ADDRESSES:** Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes the Administrator of the Service, to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The Service designated Grand Forks, located at 1504 State Mill Road, Grand Forks, ND 58206-0639, for the period beginning April 1, 1990, and ending March 31, 1993. Grand Forks requested voluntary cancellation of its designation, effective January 31, 1992.

The geographic area presently assigned to Grand Forks, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to Grand Fork's assigned geographic area are the following locations inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and

2. Minot Grain Inspection, Inc.: Farmers Feed & Grain, and Farmers Union, both in Harvey, Wells County.

Interested persons are hereby given an opportunity to apply for designation to provide official services in the specified area under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified area is for the period beginning February 1, 1992, and ending January 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the Grand Forks area.

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

Dated: July 22, 1991.

**J. T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 91-18091 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

## Correction of the List of Applicants for Designation in the Ohio Valley (OH) Area, and Extension of the Comment Period

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice correction and extension of comment period.

**SUMMARY:** The July 1, 1991, **Federal Register** inadvertently omitted the name of one designation applicant for the geographic area presently assigned to James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley). The Service is correcting that notice by adding J. W. Barton Grain Inspection Service, Inc. (Barton), to the list of applicants. The Service also is extending the comment period to September 1, 1991, to provide interested persons sufficient time to submit comments on the two applicants.

**DATES:** Comments must be postmarked on or before September 1, 1991.

**ADDRESSES:** Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:**

In the July 1, 1991, **Federal Register** (56 FR 29936), the Service named and asked interested persons to submit comments on the applicant for designation in the Ohio Valley area. Comments were to be postmarked on or before August 15, 1991. The July **Federal Register** listed Ohio Valley as the only applicant. The name of the second applicant, Barton, was omitted. Barton applied for designation to service Henderson and Union Counties.

The Service is publishing this notice to correct the omission and extend the comment period to provide interested persons the opportunity to present comments concerning both applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

The Service is extending the comment period to September 1, 1991, to provide interested persons sufficient time to submit comments on the two applicants.

**CORRECTION:** In FR Doc. 91-15459, beginning on page 29936 (56 FR 29936) in the issue of Monday July 1, 1991, make the following corrections:

1. on page 29936, in the second column, in the Title, the word "Applicant" should read "Applicants";

2. on page 29936, in the second column, under "SUMMARY", in the first paragraph, the word "applicant" should read "applicants";

3. on page 29936, in the third column, under "SUPPLEMENTARY INFORMATION", in the second paragraph, insert the following as the new third sentence. "Ohio Valley Grain Inspection, Inc., applied for the entire available area, and J. W. Barton Grain Inspection Service, Inc., applied for Henderson and Union Counties."

4. on page 29936, in the third column, under "SUPPLEMENTARY INFORMATION:", in the third paragraph, in the first and second sentences, the word "applicant" should read "applicants"; and

5. on page 29936, in the third column, under "SUPPLEMENTARY INFORMATION:", in the third paragraph, in the second sentence, the word "this" should read "these".

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

Dated: July 22, 1991.

**J. T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 91-18092 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

## Request for Comments on the Applicants for Designation to Provide Official Services in the Northwestern Ohio (OH) Area

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Service requests interested persons to submit comments on the applicants for designation to provide official services in the geographic area currently assigned to Robert B. Whitta dba Fostoria Grain Inspection (Fostoria).

**DATES:** Comments must be postmarked on or before September 16, 1991.

**ADDRESSES:** Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 30, 1991, **Federal Register** (56 FR 24368), the Service announced that Robert B. Whitta dba Fostoria Grain Inspection (Fostoria) had requested the cancellation of his designation, effective November 30, 1991. The Service also, in the same **Federal Register**, asked persons interested in providing official services within the Northwestern Ohio area served by Fostoria to submit an application for designation. Applications were to be postmarked by July 1, 1991. Robert B. Whitta, proposing to incorporate as Fostoria Grain Inspection, Inc., and Dennis L. Boltenhouse dba Erie Grain Inspection Service, a neighboring official agency, each applied for the entire available area.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

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

Dated: July 22, 1991.

**J. T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 91-18096 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

## Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Currently Assigned to the Lima (OH) Agency and the State of Virginia (VA)

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The United States Grain Standards Act, as amended (Act), provides that official agency

designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. The Service announces that the designations of Lima Grain Inspection Service, Inc. (Lima), and the State of Virginia Department of Agriculture and Consumer Services (Virginia), will terminate, according to the Act, and asks persons interested in providing official services in the specified geographic areas to submit an application for designation.

**DATES:** Applications must be postmarked on or before September 3, 1991.

**ADDRESSES:** Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202-447-8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the Service to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

The Service designated Lima, located at 2242 Arcadia Avenue, Lima, OH 45805, to provide official inspection services, and Virginia, located at 704 Washington Building, 1100 Bank Street, Richmond, VA 23219, to provide official inspection and Class X or Class Y weighing services under the Act on February 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Lima and Virginia terminate on January 31, 1992.

The geographic area presently assigned to Lima, in the State of Ohio, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern and eastern Williams County lines; the northern and eastern Defiance County lines south to U.S. Route 24; U.S. Route 24 northeast to State Route 108;

Bounded on the East by State Route 108 south to Putnam County; the northern and eastern Putnam County lines; the eastern Allen County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to U.S. Route 47;

Bounded on the South by U.S. Route 47 west-southwest to Interstate 75; Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line.

Payne Cooperative Association, Payne, Paulding County, an exception to Lima's assigned geographic area, is inside Lima's area but has been and will continue to be serviced by East Indiana Grain Inspection, Inc.

The geographic area presently assigned to Virginia, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Virginia, except those export port locations within the State.

Interested persons, including Lima and Virginia, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning February 1, 1992, and ending January 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

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

Dated: July 22, 1991.

**J. T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 91-18093 Filed 7-31-91; 8:45 am]

**BILLING CODE 3410-EN-F**

## Forest Service

### Grand Island National Recreation Area Advisory Commission Meeting; Hiawatha National Forest

**AGENCY:** Forest Service, USDA.

**ACTION:** Grand Island Advisory Commission Meeting.

**SUMMARY:** The Grand Island Advisory Commission will meet on August 12 at 8:30 a.m. at the Forest Inn on M-28 in Munising, Michigan. An agenda for the two day meeting includes updating members on the Island planning progress to date, a review of laws and regulations governing Forest Service management, development of internal operating procedures, election of a chairperson, and developing an action plan for future meetings.

Interested members of the public are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about this meeting to Art Easterbrook, Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, Michigan 49829, (906) 786-4062.

Dated: July 25, 1991.

**William F. Spinner,**

*Forest Supervisor.*

[FR Doc. 91-18243 Filed 7-31-91; 8:45 am]

**BILLING CODE 3410-11-M**

### Replacements for Honeycomb Core Materials in High Performance Composite Sandwich Constructions; Notice of Intent to Enter Into a Cooperative Research and Development Agreement

The Department of Agriculture, Forest Service, Forest Products Laboratory intents to award a Cooperative Research and Development Agreement under the authority of the Technology Transfer Act of 1986 (15 United States Code 3710a) to a Research Partner for the joint development and commercialization of novel materials and products based on wood fibers and, in particular, to produce replacements for honeycomb structures in high performance composite materials such as are used in the transportation and construction industries. The research will be based on Spaceboard I (three dimensional structural components formed from wood fiber as detailed in U.S. Patent number 4,702,870 (October 27, 1987) and U.S. Patent Office 07/711,221 (Series No.) filed June 6, 1991, "Method and Apparatus for Making Open Grids from Fibers"). It is anticipated that fiber chemistry modification will be involved. This is not a solicitation for an acquisition (procurement) contract nor a request for proposals. No solicitation documents exist. The award is based on an unsolicited proposal.

Written comments concerning the award should be sent to John G. Bachhuber, Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398, by August 26, 1991.

Dated: July 23, 1991.

**John G. Bachhuber,**

*Grants and Agreements Officer.*

[FR Doc. 91–18267 Filed 7–31–91; 8:45 am]

BILLING CODE 3410–11–M

## Soil Conservation Service

### Finding of No Significant Impact; Lake Bloomington Watershed, IL

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lake Bloomington Watershed, McLean County, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Berkland, Acting State Conservationist, Soil Conservation Service, 1902 Fox Drive, Champaign, Illinois, 61820, telephone (217) 398–5267.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mark W. Berkland, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project covers a plan for water quality improvement. The planned works of improvement include two sediment basins.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mark W. Berkland.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: July 24, 1991.

**Mark W. Berkland,**

*Acting State Conservationist.*

[FR Doc. 91–18264 Filed 7–31–91; 8:45 am]

BILLING CODE 3410–16–M

### Cobb Brook Watershed, MA; Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR part 622), the Soil Conservation Service gives notice of deauthorization of federal funding for the Cobb Brook Watershed, Massachusetts, effective on June 28, 1991.

A notice of intent to deauthorize federal funding was published on February 8, 1991 (43 CFR 27574). Concerned local, state, and federal agencies were notified of the proposed deauthorization at least 60 days prior to the effective date. No objections to deauthorization or expressions of support to complete the project have been made known to the Soil Conservation Service.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program-Public Law 83–566, 16 U.S.C. 1001–1008)

Dated: July 23, 1991.

**Richard A. Gallo,**

*State Conservationist.*

[FR Doc. 91–18268 Filed 7–31–91; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket No. 42–91]**

### Foreign-Trade Zone 77—Memphis, TN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, Tennessee, grantee of FTZ 77, requesting authority to expand its zone to include a site in Shelby County, within the Memphis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 10, 1991.

FTZ 77 was approved on April 2, 1982 (Board Order 189, 47 FR 16191, 4/15/82), and currently involves two sites in Memphis. Site 1 (22 acres, 20,000 sq. ft.) is located at the intersection of Port Street and Channel Avenue within the 2,000-acre President's Island Industrial Park. Site 2 (10 acres) is located at Republican and Tchulahoma Roads at Memphis International Airport.

The grantee now requests authority to expand the zone to include an additional site (proposed Site 3) in southeast Shelby County, some 7 miles east of Memphis International Airport. This site (126 acres) involves a warehouse complex on two nearby parcels: one at 4834 South Mendenhall Road and the other at 4836 Hickory Hill Road. The first parcel (20 acres), owned by Vantage Memphis, Inc., has a 400,000 square-foot warehouse. The second parcel (106 acres), owned by Southern States Distribution, Inc. (SSD) contains an existing warehouse (706,000 sq. ft.) with two more planned. Both facilities are operated by SSD, which has also been designated as zone operator for the new site.

No manufacturing authority is being sought at this time. such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joanne C. Cornelison, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, Suite 245, New Orleans, LA 70130–2341; and, Colonel Clinton W. Willer, District Engineer, U.S. Army Engineer District Memphis, 167 N. Main, Clifford David Federal Building, B–202, Memphis, TN 38103–1894.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 16, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 22 North Front Street, Falls Building, Memphis, Tennessee 39101

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., room 3716, Washington, DC 20230

Dated: July 24, 1991.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 91-18233 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

[A-588-055]

## Acrylic Sheet from Japan; Intent to Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on acrylic sheet from Japan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1991.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sheila Forbes or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8120.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 30, 1976, the Department of Treasury published an antidumping finding on acrylic sheet from Japan (41 FR 36497). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interested to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

### Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)

Dated: July 25, 1991.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 91-18228 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

## Sanctions for Violations of Administrative Protective Orders

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of status of investigation into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

**SUMMARY:** This is a notice of the status of investigations into charges of violations of administrative protective orders in antidumping and countervailing duty proceedings.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Powell, Chief Counsel for Import Administration, (202) 377-8916.

**SUPPLEMENTARY INFORMATION:** The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to an administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on a violation of an APO.

Two individuals violated their APO by failing to bracket or delete certain business proprietary information in the nonconfidential version of a document submitted to the Department as a part of a countervailing duty administrative review. By failing to bracket or delete the APO-covered information, the individuals violated the application for access to business proprietary information filed by the individuals, which was incorporated by reference into the APO.

In this case, the individuals involved were (1) issued a private reprimand that warned that future violations by them would be treated more severely; (2) required to attend a training session on procedures for protecting proprietary data; (3) required to set up procedures regarding protection of proprietary information in future APO's; and (4) required to send a letter of apology to the party whose business proprietary information was mishandled.

Although it is clear that a violation occurred, we consider these sanctions appropriate for the following reasons: First, the violation appears to have been inadvertent and the error was voluntarily reported to the Import Administration. Second, there appears to be no harm to the submitter of the information caused by the failure to protect the information; the only unauthorized recipient of the submission did not disseminate the material to anyone. Third, the individuals cooperated fully with ITA's investigation.

Serious harm can result from failure to properly protect business proprietary information received under APO. ITA will continue to investigate vigorously allegations that the provisions of APO's have been violated, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to business proprietary information, and debarment from practice before the ITA.

Dated: July 19, 1991.

**Roger W. Wallace,**

*Deputy Under Secretary for International Trade.*

[FR Doc. 91-18231 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-035]

## Cadmium from Japan; Intent to Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on cadmium from Japan. Interested parties who object to this revocation

must submit their comments in writing no later than August 31, 1991.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dennis Askey, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 4, 1972, the Department of Treasury published an antidumping finding on cadmium from Japan (37 FR 14700). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interested to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

**Opportunity to Object**

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)

Dated: July 25, 1991.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 91–18229 Filed 7–31–91; 8:45 am]

**BILLING CODE 3510–DS–M**

**[A–583–009]**

## Color Television Receivers, Except for Video Monitors, From Taiwan; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/ International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results and termination in part of antidumping duty administrative review.

**SUMMARY:** In response to requests by the petitioner, a domestic interested party, and certain respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. This notice covers 15 manufacturers/exporters for the period April 1, 1987 through March 31, 1988, and 16 manufacturers/ exporters for the period April 1, 1989 through March 31, 1990. We are terminating the review for Capetronic (BSR) Ltd., since the order was revoked with regard to that firm effective May 29, 1987. Capetronic's sales made between April 1, 1987, and May 29, 1987, were reviewed in the final results of the 1986–87 review (third review), published on November 9, 1990 (55 FR 47093). The review indicates the existence of dumping margins for certain firms during these periods.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Philip Marchal, Leon McNeill, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 10, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 31378) the final results of the 1988–89 (fifth) administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18336, April 30, 1984). In April 1988, the petitioner, a domestic interested party, and certain respondents requested, in accordance with § 353.53(a) of the Commerce Regulations, that we conduct an administrative review for the period April 1, 1987 through March 31, 1988. We published a notice of initiation of the antidumping duty administrative review on May 23, 1988 (53 FR 18324). In April 1990, the petitioner, a domestic interested party, and certain respondents requested that we conduct an administrative review of the period April 1, 1989 through March 31, 1990. We published a notice of initiation of the antidumping duty administrative review on June 1, 1990 (55 FR 22366).

The Department initiated a review for Action Electronics Co., Ltd. (Action), AOC International, Inc. (AOC), Capetronic (BSR) Ltd. (Capetronic), Funai Electric Co. Ltd. (Funai), Hitachi Television (Taiwan) Ltd. (Hitachi), Kuang Yuan Co., Ltd. (Kuang Yuan), Nettek Corp., Ltd. (Nettek), Paramount Electronics (Paramount), Philips Electronic Industries (Taiwan), Ltd. (Philips), Fulet Electronic Industrial Co., Ltd. (Fulet), RCA Taiwan Ltd. (RCA), Sampo Corp. (Sampo), Sanyo Electric (Taiwan) Co., Ltd. (Sanyo), Shin-Shirasuna Electric Corp. (Shirasuna), and Tatung Co. (Tatung) for the 1987–88 period.

Fulet changed its name to Proton Electronic Industrial Co. (Proton) prior to initiation of the 1989–90 review. For the period April 1, 1989 through March 31, 1990, we therefore refer to the company as Proton. By letter dated April 26, 1991, Shirasuna notified the Department that it had changed its name to Technol-Ace Corporation. For purposes of this review, we will continue to use the name Shirasuna because that was the name of the company during the period of review.

The Department initiated a review for Action, AOC, Capetronic, Funai, Hitachi, Kuang Yuan, Nettek, Paramount, Philips, Proton, RCA, Sampo, Sanyo, Shinlee Corp. (Shinlee), Shirasuna, Tatung, and Teco Electric and Machinery Co., Ltd. (Teco) for the 1989–90 period.

The Department has now conducted a review for both periods in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

For the April 1, 1989 through March 31, 1990 period, a domestic interested party, Zenith, alleged that Proton sold color televisions in the home market at prices below the cost of production. As a result of our review of this allegation, we have decided to initiate an investigation of possible home market sales by Proton at prices below the cost of production. We will therefore publish a separate notice of preliminary results

for Proton for this period upon completion of the sales below the cost of production investigation.

**Scope of the Review**

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, from Taiwan. The order covers all color television receivers regardless of tariff classification. Effective January 1, 1989, this merchandise is classified under the Harmonized Tariff Schedule (HTS) items 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00. Prior to January 1, 1989, the merchandise was classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the Tariff Schedules of the United States Annotated (TSUSA). TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers the periods April 1, 1987 through March 31, 1988, and April 1, 1989 through March 31, 1990.

For the period April 1, 1987 through March 31, 1988, Kuang Yuan, Nettek, Sampo, and Sanyo had no shipments of the subject merchandise, and Funai and Paramount failed to respond to our questionnaire. For the period April 1, 1989 through March 31, 1990, Funai, Hitachi, Philips, Sampo, Sanyo and Shirasuna had no shipments of the subject merchandise, and Paramount, Nettek, Shinlee and Teco failed to respond to our questionnaire. For those firms which had no shipments, we assigned the rate for each firm for the last period for which a review has been completed in which that firm had shipments. For those firms that failed to respond to our questionnaire, we used the best information available (BIA), which was the highest margin among respondent firms in the relevant period, or the subject firm's most recent margin, whichever was higher. Since Capetronic was revoked from the order effective May 29, 1987, and its transactions for the period April 1, 1987 through May 28, 1987 were covered in a prior review (55 FR 47093, November 9, 1990), we are terminating this review for Capetronic.

**United States Price**

In calculating United States price (U.S. price), we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. Purchase price and ESP were based on the packed f.o.b., c.i.f., or delivered prices to the first unrelated purchasers in the United States.

We made deductions, where appropriate, for export charges, ocean freight, marine insurance, U.S. and foreign inland freight and insurance, U.S. and foreign brokerage fees, bank charges, shipping charges, U.S. customs duties, inspection fees, finder's fees, harbor fees, discounts, rebates, credit expenses, warranty expenses, advertising and sales promotion expenses, after-sale warehousing, technical service expenses, royalties, bonuses, commissions to unrelated parties, selling expenses incurred in Taiwan, and the U.S. subsidiary's indirect selling expenses. Where applicable, we made an addition for import duties not collected on imported raw materials used to produce subsequently exported merchandise.

We accounted for commodity tax imposed in Taiwan or a third country (when foreign market value (FMV) was based on sales to a third country), but not collected by reason of exportation to the United States, by multiplying the appropriate duty paying value (DPV) of the merchandise sold in the United States by the tax rate in Taiwan or the third country, respectively, and adding the result to the U.S. price. In Taiwan, the DPV is the ex-factory price for merchandise produced in a bonded factory; for merchandise produced in an unbonded factory, the DPV is the price to the first unrelated purchaser in the United States. Among third countries, only in Japan was there an uncollected commodity tax for which we made an addition to U.S. price. In Japan, the DPV is the invoice amount shown on entry documentation.

We accounted for the value-added tax (VAT) imposed in Taiwan (or a third country), but not collected by reason of exportation to the United States, by multiplying the U.S. invoice value by the VAT rate, and adding the result to U.S. price.

No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating FMV, we used home market price, third-country price, or constructed value, as defined in section 773 of the Tariff Act, as appropriate.

Home market prices were used when sufficient quantities of such or similar merchandise were sold in the home market to provide a reliable basis for comparison. We used home market sales as the basis for FMV for Action in both periods, for Tatung in both periods, and for Fulet in the April 1, 1987 through March 31, 1988 period.

Since we determined that the home market sales of Kuang Yuan in the April 1, 1989 through March 31, 1990 period, and the home market sales of Philips in the April 1, 1987 through March 31, 1988 period were insufficient to use as a basis for FMV, we used third-country sales as the basis for FMV for these two companies. For certain sales, Philips did not provide constructed value information data for U.S. sales without contemporaneous third-country matches. For these sales, we used, as BIA, the highest weighted-average margin from any company during the relevant period.

For the April 1, 1987 through March 31, 1988 period, petitioner alleged that AOC sold color televisions in the home market at prices below the cost of production. As a result of our review of AOC, we found substantial quantities of below-cost sales in the home market. Therefore, pursuant to § 353.51 of the Commerce Regulations, we did not use AOC's home market sales as a basis for FMV. For models for which there were no home market sales of such or similar merchandise, we used third-country sales as the basis for FMV. For all other sales, that is, sales that would have been compared to home market sales if there had been adequate above-cost home market sales, we used constructed value as the basis for FMV. Finally, for sales made by AOC in the prior review period, but shipped during the period April 1, 1987 through March 31, 1988, we used contemporaneous home market sales of such or similar merchandise as the basis for FMV. When such sales did not exist, we used contemporaneous sales of such or similar merchandise in third-country markets.

For the April 1, 1989 through March 31, 1990 period, we used home market sales for AOC when AOC had contemporaneous sales of such or similar merchandise. We used third-country sales as a basis for FMV when contemporaneous sales of such or similar merchandise did not exist in the home market.

For the April 1, 1987 through March 31, 1988 period, since we determined that the home market sales of Shirasuna were insufficient to use as a basis for FMV, we used Shirasuna's third-country sales as the basis for FMV. Petitioner alleged that Shirasuna sold color televisions in home and third country markets at prices below the cost of production during this period. As a result of our review of Shirasuna, we eliminated from our calculations those third-country sales sold at prices below the cost of production. We used constructed value as the basis for FMV

for Shirasuna when Shirasuna had no third-country sales of such or similar merchandise, and when Shirasuna had insufficient above-cost sales of such or similar merchandise in third-country markets.

We used constructed value for RCA for both periods, and for Hitachi for the April 1, 1987 through March 31, 1988 period, since these companies had insufficient sales of such or similar merchandise in both the home and third-country markets.

Home market price was based on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, insurance, commissions to unrelated parties, rebates, credit expenses, discounts, warranty expenses, advertising and sales promotion expenses, royalties, after-sale warehousing, differences in the physical characteristics of the merchandise, and differences in packing.

We also made adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses deducted in ESP calculations, but not for amounts exceeding the U.S. commissions and expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences and VAT differences, where appropriate.

Third-country price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers. We made adjustments, where applicable, for ocean freight, brokerage and handling, marine insurance, foreign import duty, Taiwan inland freight and insurance, bank charges, harbor taxes, import charges, shipping charges, credit expenses, royalties, selling expenses incurred in Taiwan, differences in the physical characteristics of the merchandise, and differences in packing.

We also made adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses deducted in ESP calculations, for amounts not exceeding the U.S. commission and expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences and VAT differences, where appropriate.

No other adjustments were claimed or allowed.

Constructed value consisted of the sum of the costs of materials, fabrication, and general expenses; profit; and the cost of export packing. Where the statutory minimum of 10 percent of the cost of materials and fabrication exceeded the actual amount of general expenses, we added the statutory minimum amount, in accordance with section 773(e) of the Tariff Act. Where the statutory minimum of eight percent of the sum of the cost of materials, fabrication, and general expenses exceeded the actual profit, we added the statutory minimum.

We made adjustments to constructed value, where applicable, for differences in merchandise. We also made circumstance-of-sale adjustments, where applicable, for royalty, warranty, and credit.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine the dumping margins to be:

| Manufacturer/ Exporter | Time period | Margin (percent) |
|---|---|---|
| Action Electronics Co., Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | 0.30 7.07 |
| AOC International, Inc. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | 8.57 0.23 |
| Funai Electric Co. Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | [2] 23.90 |
| | | [1] 4.44 |
| Fulet Electronic Industrial Co., Ltd. | 04/01/87–03/31/88 | 0.52 |
| Hitachi Television (Taiwan) Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | 23.90 |
| | | [1] 10.82 |
| Kuang Yuan Co., Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | [1] 0.00 0.00 |
| Nettek Corp., Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | [2] 23.90 |
| | | [2] 10.82 |
| Paramount Electronics | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | [2] 23.90 |
| | | [2] 10.82 |
| Philips Electronic Industries (Taiwan), Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | 6.65 [1] 10.82 |
| RCA Taiwan, Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | 6.46 1.94 |
| Sampo Corp. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | [1] 0.78 |
| | | [1] 0.78 |
| Sanyo Electric (Taiwan) Co., Ltd. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | [1] 4.66 |
| | | [1] 4.66 |
| Shinlee Corp. | 04/01/89–03/31/90 | [2] 10.14 |
| Shin-Shirasuna Electric Corp. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | 8.08 [1] 10.82 |
| Tatung Co. | 04/01/87–03/31/88 | |
| | 04/01/89–03/31/90 | 1.88 |
| Teco Electric and Machinery Co., Ltd. | 04/01/89–03/31/90 | [2] 8.57 |

[1] No shipments during the period; rate is from the last review in which there were shipments.

[2] No response; we therefore used the best information available, which was either the highest rate among respondent firms in the relevant review, or the subject firm's most recent margin, whichever was higher.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the dumping margin for Kuang Yuan is zero, and the margin for AOC is less than 0.5% and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For Proton, the rate established in the review of the 1988/89 period (56 FR 31378, July 10, 1991) will remain in effect. For all other manufacturers/exporters of this merchandise, not covered in this or prior reviews, a cash deposit of estimated antidumping duties of 8.57 percent shall be required. This figure is the highest non-BIA rate for the most recent period for any firm in this case. These deposit requirements and waiver are effective for all shipments of color television receivers, except video

monitors, from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22) (1990).

Dated: July 24, 1991.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 91-18227 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

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[A-588-007]

## High Capacity Pagers From Japan; Intent to Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on high capacity pagers from Japan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1991.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-4851.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 16, 1983, the Department of Commerce published an antidumping duty order on high capacity pagers from Japan (48 FR 37058). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

### Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 25, 1991.

Roland L. MacDonald,

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 91-18230 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

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[A-461-008]

## Titanium Sponge from the U.S.S.R.; Intent to Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on titanium sponge from the U.S.S.R. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1991.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 28, 1968, the Department of Treasury published an antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

### Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 25, 1991.

Roland L. MacDonald,

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 91-18226 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

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[A-588-802]

## Notice of Preliminary Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof From Japan

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, SW., Washington, DC 20230; telephone: (202) 377-3965.

Period of Review: September 29, 1988, through March 31, 1990.

Preliminary Results and Termination in Part of Antidumping Duty Administrative Review:

**Background**

On April 3, 1989, the Department published in the **Federal Register** (54 FR 13406) an antidumping duty order on 3.5" microdiscs and coated media thereof from Japan. On June 1, 1990, we published notice of our initiation of antidumping administrative reviews (55 FR 22366) for the folowing firms:

- Fuji Photo Film (Fuji)
- Kasei Verbatim
- Konica Corporation (Konica)
- Memorex Telex Japan (Memorex)
- Sanken Plastics Co. (Sanken)
- Sony Corporation (Sony)
- TDK Corporation (TDK)
- Teijin Memorimedia (TMC)
- Tokyo Materials Co.

Each of the firms listed above received questionnaires by June 28, 1990.

On June 14, 1990, Sanken USA withdrew its requests for reviews of TDK and Tokyo Materials Co. However, TDK is still being reviewed at its own request. On July 25, 1990, we published notice of our termination of the administrative review of Tokyo Materials Co. (55 FR 30260).

On July 18, 1990, Magmedia, an importer, argued that Sanken USA's requst for review of Konica be limited to entries of the subject merchandise produced by Konica for which the requester, Sanken, is the importer of record. On August 16, 1990, Sanken USA withdrew its requests for reviews of Konica Corporation and Sanken Plastics Co. On August 13, 1990, Verbatim withdrew its request for review of Kasei Verbatim. Accordingly, the Department of Commerce (the Department) is terminating the administrative review for these companies.

The Department is now conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act), for the following companies: Fuji, Memorex, Sony, TMC, and TDK.

All five companies requested and received extension dates for submission of their questionnaire responses. Responses to the Department's questionnaire were received from Memorex, TDK, and TMC on September 4, 1990. Sony's questionnaire response was received on September 5, 1990, and Fuji's questionnaire response was received on September 10, 1990. We issued a deficiency letter to TMC on April 30, 1991. On April 29, 1991, we issued deficiency letters to Fuji, Memorex, and Sony, and on May 3 and May 7, 1991, we issued deficiency letters to TDK. All five companies requested and were granted extensions. TMC submitted its response to the Department's deficiency letter on May 24, 1991. We received an additional submission from TMC on June 25, 1991. Sony submitted its response on May 28, 1991, and additional supplemental submissions on June 3, 1991. We received responses from Fuji on May 20, 1991, and Memorex on May 17, 1991. We received deficiency responses from TDK on May 28, 1991, in reference to our May 1 and May 7, 1991, deficiency letters. On June 18, 1991, we issued deficiency letters to all respondents. On June 26, 1991, responses to these deficiency letters were received from all five respondents.

**Scope of Review**

The products covered by this review are 3.5" microdiscs and coated media thereof from Japan and are currently provided for under subheading 8523.20.0000 of the Harmonized Tariff Schedules (HTS). These products were previously provided for in item 724.4570 of the Tariff Schedules of the United States (TSUS). Although the HTS and TSUS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

A 3.5" microdisc is a tested or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. These microdisks are used to record and store encoded digital computer information for access by 3.5" floppy disk drives. The 3.5" microdisc includes single-sided, double-sided, or high-density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. The 3.5" microdisc is intended for use specifically in a 3.5" floppy disk drive.

**Such or Similar Merchandise**

For all respondent companies, in accordance with section 771(16) of the Act, we established two categories of such or similar merchandise: (1) 3.5" microdiscs and (2) coated media.

We made adjustments for differences in the physical characteristics of the merchandise (difmers), where appropriate, in accordance with section 773(a)(4)(c) of the Act.

**United States Price**

Fuji

For Fuji, we based United States price (USP) on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed, f.o.b. Japanese port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and foreign inland insurance. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign brokerage, foreign inland freight, foreign inland insurance, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, and U.S. brokerage and, where appropriate, for other deductions.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for advertising, and credit expenses. We made further deductions for commissions and indirect selling expenses in the home market and United States, including inventory carrying costs, warehousing expenses, and indirect selling expenses in Japan. We recalculated U.S. indirect selling expenses based on information on the record. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

In addition to the aforementioned deductions, we deducted all value added to the microdisk, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the completed microdisk, other than the costs associated with the imported media, and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling costs incurred by the company for the microdisk. The total profit or loss was then allocated proportionately to all components of cost.

In determining the costs incurred to produce the microdisk, the Department included (1) the costs of manufacture, (2) movement and packing expenses, and (3) general expenses including selling and administrative expenses, R&D expense and interest expense.

We used Fuji's data where the costs were not appropriately quantified or

valued. We adjusted the manufacturing costs in Japan for production of the magnetic media by including interest expense because it was not included in the submission. We calculated interest expense using our normal methodology, *i.e.*, computing the ratio of Fuji's interest expense to cost of sales from the consolidated financial statements and applying it to the cost of manufacture. We also adjusted the further manufacturing costs incurred in the United States for production of the 2.5" microdisks by including interest expense because it was not included in the submission. We calculated interest expense using our normal methodology.

Memorex

Memorex reported entries of the subject merchandise that were subsequently re-exported. Because this subject merchandise was re-exported without an intervening sale to an unrelated party in the United States, we have not included it in our calculations. Memorex also reported some entries of the subject merchandise that were used for internal purposes. Because this subject merchandise was never sold to an unrelated party in the United States, we have not included it in our calculations.

For Memorex, we based USP on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign inland freight, foreign inland insurance, foreign brokerage, ocean freight, U.S. brokerage, U.S. duty, U.S. inland freight, and U.S. inland insurance and, where appropriate, for discounts, price protection rebates, and volume rebates. For certain transactions, Memorex had no values reported for movement charges even though the terms of sale indicated that such charges were incurred. Because Memorex provided no explanation for the unreported movement charges on these transactions, we have used the highest charge or expense reported on other sales as BIA. We also recalculated inventory carrying expenses using the period from when the merchandise left the warehouse in Japan to when it was delivered to the final customer.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for advertising, commissions and credit expenses. We made further deductions for indirect selling expenses, including inventory carrying costs and indirect selling expenses in Japan. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

Sony

Sony reported entries of the subject merchandise that were subsequently re-exported. Because this subject merchandise was re-exported without an intervening sale to an unrelated party in the United States, we have not included it in our calculations.

For Sony Corporation, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed, f.o.b. Japanese port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, and foreign brokerage. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. For some sales, Sony reported an amount to account for billing errors. We applied the reported amount to the reported price in order to arrive at a price adjusted for billing errors. We made deductions for foreign brokerage, foreign inland freight, ocean freight, marine insurance, duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage and, where appropriate, for discounts, price protection rebates, and volume rebates.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for packing expenses incurred in the United States, advertising, warranty expenses, and credit expenses. We also made deductions for indirect selling expenses, including inventory carrying costs and indirect selling expenses in Japan. In accordance with section 772(e)(1) of the Act, we also deducted commissions. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

Because Sony failed to report further manufacturing costs, as requested in both the original questionnaire and supplemental request, we used the average of the positive margins calculated for Sony transactions for these sales, as best information available (BIA) in accordance with section 776(c) of the Act. In addition, certain transactions had no values reported for movement charges even though the terms of sale indicated that such charges were incurred. Similarly, certain transactions contained no selling expenses even though the narrative portion of the questionnaire response indicated that these expenses were incurred on all sales. Because Sony provided no explanation for the unreported movement charges and expenses on these transactions, we have used the highest charge or expense reported by Sony on other sales as BIA.

TDK

For TDK, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. TDK made certain sales in Japan which it knew would be exported to the United States. We have treated such sales as purchase price sales. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed prices to unrelated customers in the United States delivered to their Japanese warehouses. We made deductions for loading, foreign inland freight, and foreign inland insurance and, where appropriate, for ship and debit rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered, duty paid, prices to unrelated customers in the United States. We made deductions for ocean freight, marine insurance, duty, U.S. harbor maintenance fees, U.S. inland freight, U.S. brokerage, foreign brokerage, foreign inland insurance, foreign inland freight and, where appropriate, for discounts, price protection rebates, volume rebates, and ship and debit rebates. TDK failed to provide an adequate response to our request for data used in deriving foreign inland freight. Therefore, in accordance with

section 776(c) of the Act, as BIA, we used the highest monthly per-unit amount reported by TDK for home market inland freight charges and applied this amount toward ESP sales.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for packing expenses incurred in the United States, direct advertising expenses, cooperative advertising expenses, promotional expenses, samples, warranty expenses, credit expenses, and indirect selling expenses consisting of indirect advertising expenses, inventory carrying costs, and indirect selling expenses incurred in Japan and in the United States. In accordance with section 772(e)(1) of the Act, we also deducted commissions. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

In addition to the aforementioned deductions, we deducted all value added to the microdisk, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the completed microdisk, other than the costs associated with the imported media, and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling costs incurred by the company for the microdisk. The total profit or loss was than allocated proportionately to all components of cost.

In determining the costs incurred to produce the microdisk, the Department included (1) the costs of manufacture, (2) movement and packing expenses, and (3) general expenses, including selling and administrative expenses, R&D expense, and interest expense.

We used TDK's data, except in the following instances where the costs were not appropriately quantified or valued: we adjusted the manufacturing costs in Japan for production of the magnetic media by including interest expense because it was not included in the submission. We calculated interest expense using our normal methodology, *i.e.*, computing the ratio of TDK's interest expense to cost of sales from the consolidated financial statements and applying it to the cost of manufacture. We also adjusted the further manufacturing costs incurred in the U.S. for production of the 3.5" microdisks by recalculating interest expense. Since TDK did not explain how interest expense was calculated for further manufacturing costs, the Department recalculated interest expense using its normal methodology.

TMC

For TMC, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

There were two shipments of the subject merchandise during the period of review (POR) which entered the United States where the sale was subsequently cancelled. TMC used some of the micordisks from these shipments to fill two orders that were placed with TMC Japan prior to the importation of merchandise. The remainder of the microdisks from the two original shipments were used to fill six orders placed with TMC's U.S. subsidiary after importation of the two original shipments. Because the first two orders of microdisks were made prior to importation we are treating them as purchase price sales. However, because the remaining six orders were made after importation we have treated them as ESP sales.

We calculated purchase price based on packed, f.o.b. Japnese port prices and C&F prices to unrelated customers in the United States. We made deductions for foreign inland freight, foreign brokerage, foreign inland insurance, ocean freight, U.S. inland freight, duty, U.S. brokerage and, where appropriate, for rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the net until price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign brokerage, foreign inland freight, foreign inland insurance, ocean, freight, marine insurance, duty, U.S. inland freight, and U.S. brokeage.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for U.S. bank charges and credit expenses. We also made deductions for U.S. indirect selling expeneses, including inventory carrying costs in Japan and in the United States. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

**Foreign Market Value**

In order to determine whether there were sufficient sales of microdisks in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales in each such or similar category to the volume of third country sales in the same such or similar category, in accordance with section 773 (a)(1)(B) of the Act. Fuji, Memorex, Sony, TDK, and TMC all had viable home markets.

Fuji

We calculated FMV based on packed, delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance and, where appropriate, for other deductions. We recalculated inalnd freight based on information on the record. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in advertising, credit, and promotional expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance and, where appropriate, for other deductions. We made further deductions, where appropriate, for advertising, credit, and promotional expenses. We also deducted indirect selling expenses, including inventory carrying expenses. We recalculated home market indirect selling expenses based on information on the record. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b)(2). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

Fuji did not report the requested difmer information for the entire POR. Therefore, we used the difmer data submitted for the period April through October 1989, as BIA in accordance with section 776(c) of the Act. We compared

data from this period with difmer data submitted for the period October 1989 through April 1990. April through October 1989 is the earliest portion of the POR for which difmer information is available. Furthermore, information from this period yields the highest difmer value to be applied to FMV.

Memorex

We calculated FMV based on packed, delivered prices to related and unrelated home market customers. For comparisons with U.S. microdisk sales, we included home market sales of microdisks to related parties because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length. Although Memorex stated that the reported charges and adjustments applied to all sales, there were numerous sales transactions for which no amounts were reported for many of the charges and adjustments. Furthermore, Memorex did not provide an explanation of price protection rebates in response to our questionnaire and deficiency letter. In our deficiency letter we also asked Memorex to clarify the charges and adjustments for which no amounts were reported. In accordance with section 776(c) of the Act, we are disallowing Memorex's claim for price protection rebates, and, as BIA, we are using the zero amounts reported for charges and adjustments. When making comparisons with ESP sales, we made deductions for inland freight, inland insurance and, where appropriate, for volume rebates. We made deductions, where appropriate, for royalties, technical services, warranty expenses, and credit expenses.

We made additional deductions from FMV for home market indirect selling expenses, which consisted of inventory carrying costs and other indirect selling expenses. In accordance with 19 CFR 353.56(b), the deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For U.S. sales of media, there were no sales of such or similar merchandise in the home market or in any third-country markets during the POR. Therefore, for media sold in the United States, we calculated FMV based on constructed value (CV), in accordance with section 773(e) of the Act. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit, and packing. We used Memorex's CV data except in the following instances where the costs were not reported in its submission:

1. To calculate general expenses, we computed the ratio of Memorex's general and administrative expenses to cost of sales as reported on its financial statements, as BIA, and applied this ratio to the reported cost of manufacture.
2. We calculated selling expenses for CV as the weighted-average direct and indirect selling expenses reported for all sales of the subject merchandise during the POR.
3. For media packing costs, we used the lowest amount for media packing reported for U.S. sales of disks as BIA.

After the adjustments, we used actual general expenses (as described above), in accordance with section 773(e)(1)(B)(i) of the Act, because these expenses exceeded the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because the actual amount was less than the statutory minimum of eight percent. Then we added U.S. packing costs.

We made circumstance of sale adjustments, where appropriate, for royalties, technical services, warranty expenses, and credit expenses. We made further deductions from FMV for home market indirect selling expenses, which consisted of inventory carrying costs and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenes and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b).

Sony

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in advertising, credit, and promotional expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance and, where appropriate, for price protection and volume rebates. We made deductions, where appropriate, for advertising, credit, and promotional expenses. We also deducted indirect selling expenses, including inventory carrying expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

TDK

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's length.

For comparisons to purchase price sales, we made deductions for loading, inland freight, storage fees, inland insurance and, where appropriate, for ship and debit rebates and volume incentive rebates. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in credit and direct advertising expenses. We deducted home market packing costs and added U.S. packing costs. TDK failed to provide an adequate response to our request for data to be used in deriving home market packing material costs. Therefore, we used, as BIA, the lowest monthly per-unit ESP packing materials costs and used this amount for home market sales. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for loading, inland freight, inland insurance and, where appropriate, for price protection rebates, ship and debit rebates, and volume incentive rebates. We made deductions, where appropriate, for credit and direct advertising expenses. We also deducted indirect selling expenses, including inventory carrying expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR

353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

TMC

We calculated FMV based on packed, delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance. For some sales TMC reported an amount to account for errors in billing freight charges. We applied the reported amount to the reported price in order to arrive at a price adjusted for billing errors. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in credit, technical services, warranties, and promotional expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance. We made deductions, where appropriate, for credit, technical services, warranties, and promotional expenses. TMC made no claim for home market indirect selling expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

TMC had sold certain media to an unrelated customer in the home market. TMC then stated that because this unrelated customer exported the subject merchandise to its U.S. subsidiary, sales by TMC to the unrelated customer should be treated as purchase price sales. However, we disregard these sales since any media shipped by the unrelated customer to the U.S. during the POR was in the form of completed microdisks.

**Results of the Review**

As a result of our review, we preliminarily determine that the following margins exist for the period September 29, 1988, through March 31, 1990:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Fuji | 18.65 |
| Memorex | 16.96 |
| Sony | 7.55 |
| TDK | 17.31 |
| TMC | 5.82 |

The Department will issue appraisement instructions concerning these companies directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of the subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise produced or exported by any of the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or any previous review, or the original investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in the most recent review or investigation; (3) the cash deposit rate for all other producers/exporters not covered in this review, or in the original investigation, who are unrelated to the reviewed firms or any firms which were subject to the original investigation, shall be 11.60 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or any other written comments must be submitted in at least ten copies of the proprietary version and five copies of the public version, including the public summary required under 19 CFR 353.32, to the Assistant Secretary for Import Administration no later than August 12, 1991, and rebuttal briefs no later than 10 a.m. on August 19, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, such a hearing will be held on August 26, 1991, at 2 p.m. at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing as the scheduled date approaches to ensure that circumstances have not required a change in plans.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (c)(5).

Dated: July 22, 1991.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 91-18300 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-803]

## Malleable Iron Pipe Fittings from Thailand; Termination of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of termination of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce ("the Department") has terminated the countervailing duty administrative review of malleable iron pipe fittings from Thailand, initiated on March 15, 1991.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mark Spellun or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:** On February 27, 1991, the petitioner requested a countervailing duty administrative review of malleable iron pipe fittings from Thailand for the period January 1, 1990, through December 31, 1991. No other interested party requested the review. On March 15, 1991, the Department initiated the administrative review for that period (56

FR 11177). The petitioner withdrew its request for review on June 13, 1991. The respondent did not object to the termination of the review. As a result, the Department has determined to terminate the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 23, 1991.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 91-18234 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

## Notice of Scope Rulings

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of scope rulings.

**SUMMARY:** The International Trade Administration (ITA) hereby publishes a list of scope rulings completed between April 1, 1991, and June 30, 1991. In conjunction with this list, the ITA is also publishing a list of pending scope inquiries. The ITA intends to publish future lists within thirty days of the end of each quarter.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Melissa G. Skinner, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4851.

### Background

Sections 353.29(d)(8) and 355.29(d)(8) of the Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months. The lists are to include the case name, reference number, and brief description of the ruling.

This notice lists scope rulings completed between April 1, 1991, and June 30, 1991, and pending scope clarification requests. The ITA intends to publish in October 1991 a notice of scope rulings completed between July 1, 1991, and September 30, 1991.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

### Scope Rulings Completed Between April 1, 1991, and June 30, 1991

*Country:* Federal Republic of Germany.

*A-428-801:* Antifriction Bearings.

FAG Kugelfischer Georg Schaefer KGaA—certain products including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys are textile machinery components (model numbers 12.127, 12.128, 12.155, 12.157, 12.158, 12.205, 12.264, 12.265, 12.301, 326.27, VR 2147-3, VR 2158-1, VR 2158, VR 2158-3, VR 2177, VR 2177-01, VR 2177-13, TL 2256-04.00000.01, TL 2256-04.00101, TL 2256-04.00101.01, TL 2256-18.00.240.19, TL 2256-14.00.100, 12.150, 12.270, 12.272, 12.273, 12.274, LR 2396, 12.200, SW 18202-1, SW 18261-1, SW 23180-6, SW 23227-6, SW23277-6, FR 3.21, FR 1310, RZ 70-9, RZ 70-20, RZ 90, and SL 1625) are not within the scope of the order—5/23/91.

*Country:* Italy

A-475-801: Antifriction Bearings:

Meter S.p.A.—"load rollers" (forklift truck mast components), "thrust rollers" (forklift truck mast components), "trolley wheels" (conveyor system components), and "chain wheels" (conveyor system components) are bearings within the scope of the order—6/28/91 [7/11/91—FR].

*Country:* Republic of Korea.

*A-580-008:* Color Television Receivers:

Gold Star Co., Ltd.—combination television/radio model RCV-0615 is within the scope of the order—6/18/91.

Gold Star Co., Ltd.—television/VCR model KMV-9002 is within the scope of the order—6/18/91.

*A-580-803:* Certain Small Business Telephone Systems and Subassemblies Thereof:

TT Systems Corporation—Simtel 420 telephone set is within the scope of the order—4/23/91.

*Country:* Japan.

*A-588-087:* Portable Electric Typewriters:

Swintec/Nakajima—typewriter models 8000, 800SP, 8011, 8011SP, 8012, 8014S, 8014KSR, 8016, 8017, 1145CM, 1146CM, 1146CMA, 1146CMP, 1146CMSp, 1186CM, and 1186CMP are "office" typewriters outside the scope of the order—6/5/91.

*A-588-405:* Cellular Mobile Telephones and Subassemblies:

Mitsubishi Electric Corporation—RF power amplifiers are subassemblies within the scope of the order—4/15/91—§ 353.29(i)(1).

Murata Manufacturing Co., Ltd., and Murata Erie North America, Inc.—voltage control oscillators (VCOs), active filters, and duplexers are preliminary within the scope of the order—5/31/91.

*A-588-802:* 3.5" Microdisks and Coated Media Thereof:

Kao Infosystems Company—certain unprepared media/unburnished media are "coated media" within the scope of the order—6/26/91.

### Pending Scope Inquiries as of June 30, 1991

*Country:* Canada.

*A-122-506:* Oil Country Tubular Goods:

Algoma Steel Corporation, Ltd.—entries prior to March 28, 1991 scope ruling eliminating end use certifications.

*County:* Sweden.

*A-401-801:* Antifriction Bearings:

Lindsay Forest Products, Inc.—patented design, square wires for debarker rotors.

*Country:* United Kingdom.

*A-412-801:* Antifriction Bearings:

Essco Inc.—"linear motion bearings".

*Country:* Federal Republic of Germany.

*A-428-801:* Antifriction Bearings:

FAG Kugelfischer Georg Schaefer KGaA—certain needle roller bearings.

SKF Textilmaschinen-Komponenten GmbH and SKF Textile Products, Inc.—textile machinery component (rotor assembly number TE 226-0036225).

Wafios Machinery Corporation—"machines parts".

Reifenshuser-Van Dorn Co.—spare parts (bearings) to rebuild gear box.

GMN—bearings for use in machine tool spindles.

Oilgear—specialized bearings.

Schelegel Durbal, Inc.—rod ends.

*A-428-802:* Industrial Belts:

Ernst Siegling and Siegling America—nylon core flat belts.

*Country:* USSR.

*A-461-008:* Titanium Sponge:

Hi-Temp Specialty Metals, Inc.—compacted (or compressed) titanium scrap fines.

*Country:* Italy.

*A-475-801:* Antifriction Bearings:

Wolf D. Barth Co., Inc., and SKF Component System Co.—7/32" chrome steel balls.

Meter S.p.A.—"chain sheaves" (forklift truck mast components).

*Country:* Thailand.

*C-549-501:* Pipe and Tube:

Intrepid; British Standard Pipe.

*Country:* Singapore.

*A-559-801:* Antifriction Bearings:

SKF—loose ball rollers used in textile drafting machinery (top rollers).

*C–559–802:* Antifriction Bearings:
SKF—loose ball rollers used in textile drafting machinery (top rollers).

*Country:* People's Republic of China.
*A–570–003:* Cotton Shop Towels:
Win-Tex Products, Inc.—towels assembled in Honduras.
*A–570–504:* Petroleum Wax Candles:
Fabri-centers of America, Inc.—citronella candles.

*Country:* Korea.
*A–580–008:* Color Television Receivers:
Commodore Business Machines—computer monitor model 1084(D).
Granada Hospital Group—Spectrum C–10 Interactive Receiver.
*A–580–605:* Color Picture Tubes:
Penn-Ray Sutra Corp.—video game displays.
*A–580–803:* Certain Small Business Telephone Systems and Subassemblies Thereof:
Cord Electronics, Inc.—Digital Display Set telephone set (DDS).

*Country:* Japan.
*A–588–007:* Certain High Capacity Pagers:
Motorola—components and subassemblies.
*A–588–015:* Television Receiving Sets, Monochrome and Color:
NEC—Subassemblies: W5A–1 (HE), W4A–1 (HE), W3A–1 (HE), W5A–1, and W4A–1.
Sharp—LCD TV/Radio/Cassette model JC–AV1.
Teknika Electronics Corp.—P.C.B. subassemblies.
Sharp—LCD TV/VCR model VC–V542U.
Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd, Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Toshiba Corporation, and Toshiba America, Inc.—certain hand-held liquid crystal display televisions (Casio Computer Co., Ltd. models TV–400T, TV–500, TV–1400, TV–3100, TV–8500; Citizen Watch Co., Ltd. models 06TA, 08TA, TB20, TA80, TC50, TC53, DD–T126, DD–P226, TC52; Matsushita Electric Industrial Co., Inc. models CT–301E/302B, CT–311E/312B; and Seiko Epson Corporation models LVD–602, LVD–702, LVD–802) and all other LCD TVs under 6" in screen size imported into the United States.
P.T. Imports, Inc.—multiple voltage and receiving system TVs, JVC series "ME" and "MU".
Synergistic Technologies, Inc.—TV monitors manufactured by Victor Company of Japan.
*A–588–087:* Portable Electric Typewriters:
Tokyo Juki—"office" typewriter models: Juki Sierra 4500, Sierra 3300, Sierra 3400, Sierra 3400C, Sierra 3500, Sierra 3500XL, Sierra Officewriter, Remington Rand 770, Remington Rand 775, Remington Rand 880, Avanti 1400, and Avanti 1500.
Smith Corona Corporation—anti-circumvention inquiry to determine whether Brother Industries, Ltd. and Brother Industries (USA), Inc., by importing parts and components from Japan, and assembling them into finished portable electric typewriters for sale in the U.S., is circumventing the order.
Nakajima, Canon, and Smith Corona—portable electric typewriters with computer interface.
*A–588–405:* Cellular Mobile Telephones and Subassemblies:
Murata Manufacturing Co., Ltd., and Murata Erie North America, Inc.—voltage control oscillators (VCOs), active filters, and duplexers.
*A–588–504:* Erasable Programmable Read Only Memories:
Intel Corporation, Advanced Micro Devices, Inc., and National Semiconductor Corporation—flash memory EPROM.
*A–588–804:* Antifriction Bearings:
DHL Worldwide Express—certain bearings.
*A–588–806:* Electrolytic Manganese Dioxide:
Sumitomo—High-grade chemical manganese dioxide (CMD–U).
*A–588–807:* Industrial Belts:
Dataplex—belts for magnetic ink character recognition.
*A–588–809:* Certain Small Business Telephone Systems and Subassemblies Thereof:
Iwatsu Electric and Iwatsu America—subassemblies including: common and expansion modules, circuit cards, power supplies, and stations.
Kyushu Matsushita Electric Co., Ltd.—KME 336, certain subassemblies, and accessories.
*A–588–810:* Mechanical Transfer Presses:
Aida Engineering—spare and replacement parts.
Customs—destack sheet feeder.
Central States Can Co.—"production line" for half size tray food cans.
*General Request:* Customs requested the Department determine whether ceramic bearings are within the scope of the orders on antifriction bearings.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

Dated: July 25, 1991.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 91–18232 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–05–M

## Colgate University; Notice of Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 91–018. *Applicant:* Colgate University, Hamilton, NY 13346. *Instrument:* Rapid Kinetics Accessory Sample Handling Unit. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 8185, February 27, 1991.

*Comments:* No comments have been received with respect to this application. *Decision:* Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (December 20, 1990). *Reasons:* The foreign instrument provides quantitation of elemental species by mass detection of singly charged ions from an inductively coupled argon plasma with ppt detection limits. The National Institutes of Health advises in its memorandum dated May 30, 1991 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 91-18301 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

## Louisiana State University, et al.; Notice of Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

*Docket Number:* 91-100.

*Applicant:* Louisiana State University, Baton Rouge, LA 70803.

*Instrument:* Mass Spectrometer, Model 262V.

*Manufacturer:* Finnigan MAT, West Germany.

*Intended Use:* The instrument will be used to study geological materials including rocks, minerals, sediments, natural waters and fossils. The objectives of these investigations will be to:

(1) Determine the source of natural waters and their interaction with rocks and sediments through which they flow,

(2) Understand the origin of rocks and their alteration and deformation history and

(3) Date rocks and sediment strata and determine the timing of geological events.

*Application Received by Commissioner of Customs:* July 2, 1991.

*Docket Number:* 91-102.

*Applicant:* California Institute of Technology, 1201 E. California Boulevard, Pasadena, CA 91125.

*Instrument:* Mass Spectrometer System, Model 252.

*Manufacturer:* Finnigan MAT, West Germany.

*Intended Use:* The instrument will be used for oxygen and carbon isotope analyses of minerals, rocks, atmospheric gases, organic substances and natural waters from the Earth, the Moon and meteorities.

*Application Received by Commissioner of Customs:* July 2, 1991.

*Docket Number:* 91-103.

*Applicant:* Seattle University, 12th and East Columbia, Seattle, WA 98122.

*Instrument:* Electron Microscope, Model Em 900.

*Manufacturer:* Carl Zeiss, West Germany.

*Intended Use:* The instrument will be used to study mitotically active cells in invertebrate animals and algae, to examine relationships between motile structures and other parts of the cell, and to study the structural relationships between symbiotic organisms. There is particular interest in evidence of polyploidy, complex cell-cell interactions and comparative studies of structure and orientation of numerous nuclei in the same large cell. In addition, the instrument will be used in several courses taught within the Biology Department.

*Application Received by Commissioner of Customs:* July 3, 1991.

*Docket Number:* 91-104.

*Applicant:* Rutgers University, Department of Physics, P.O. Box 849, Piscataway, NJ 08855-0849.

*Instrument:* 2 Dimensional Ion Energy Analyzer.

*Manufacturer:* High Voltage Engineering, The Netherlands.

*Intended Use:* The instrument will be used for studies of copper, nickel, gold, platinum and silicon, either atomically clean or with adsorbed layers of common adsorbates (for example, sulfur, oxygen, hydrogen and carbon monoxide), or other metals. The phenomenon to be studied is in all cases the atomic geometry of the surface of the material in question, i.e., the coordinates of the atoms at the surface.

*Application Received by Commissioner of Customs:* July 9, 1991.

*Docket Number:* 91-105.

*Applicant:* University of Cincinnati, Center Hill Research Facility, 5955 Center Hill Road, Cincinnati, OH 45224.

*Instrument:* Mass Spectrometer, Model ICP200LA.

*Manufacturer:* Turner Scientific, United Kingdom.

*Intended Use:* The instrument will be used for studies of soils from hazardous waste sites to determine the types and classes of metal complexes in the soil, before and after treatment with environmental remediation.

*Application Received by Commissioner of Customs:* July 10, 1991.

*Docket Number:* 91-106.

*Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 207 Administration Building, 506 S. Wright Street, Urbana, IL 61801.

*Instrument:* Electron Microscope., Model H-9000.

*Manufacturer:* Hitachi Scientific Instruments, Japan.

*Intended Use:* The instrument will be used to study the atomic structure of interfaces between materials, including semiconductors, metals, insulators and superconductors.

*Application Received by Commissioner of Customs:* July 11, 1991.

*Docket Number:* 91-107.

*Applicant:* University of Rochester, Purchasing Services, 70 Galer House, Rochester, NY 14620.

*Instrument:* Eye Movement Tracker, Model 2020.

*Manufacturer:* EL-MAR Inc., Canada.

*Intended Use:* The instrument will be used for studies of movements of the right and left eyes in human subjects in response to controlled whole-body rotatory and/or linear motion profiles. Experiments will be conducted to determine how the balance system of the inner ear detects head motion and properly drives eye position to maintain binocular fixation on visual targets, thereby maintaining a stable image on the retinal fovea. A particular thrust of our research is to determine potential deteriorations in the balance system and eye movement control with aging; an important public health concern.

*Application Received by Commissioner of Customs:* July 16, 1991.

*Docket Number:* 91-108.

*Applicant:* Kent State University, Kent, OH 44242.

*Instrument:* Rotating Anode X-ray Generator, Model RU-200H.

*Manufacturer:* Rigaku, Japan.

*Intended Use:* The instrument will be used for the study of the structure and very subtle structural changes that take place in a class of materials known as Liquid Crystals as the temperature is changed.

*Application Received by Commissioner of Customs:*

Dated: July 17, 1991.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 91-18302 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### South Atlantic Fishery Management Council; Wreckfish Limited Entry Public Hearing; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearing; correction.

**SUMMARY:** This document corrects a notice of a public hearing on proposed changes to Amendment 5 to the Snapper-Grouper Fishery Management Plan that was published on July 10, 1991 (56 FR 31390).

**FOR FURTHER INFORMATION CONTACT:** Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, 803–571–4699.

In notice document 91–16319 beginning on page 31390 in the issue of Wednesday, July 10, 1991, in the second column under **SUPPLEMENTARY INFORMATION** in the 4th line, "August 16, 1992" should read "April 16, 1992".

Dated: July 26, 1991.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91–18194 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–22–M

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Oregon Coastal Natural Coho Review Group (OCNCRG) will hold its second public meeting. The meeting will be held on August 13, 1991, beginning at 9:30 a.m., at the Oregon State University Campus, in room 200 of the Forestry Sciences Laboratory, 3200 SW. Jefferson Way, Corvallis, Oregon.

The OCNCRG will examine the causes that have led to failure in attaining the spawning escapement objective for the Oregon coastal natural coho stock. The OCNCRG will report its findings and recommendations to the Pacific Fishery Management Council in November 1991.

**FOR MORE INFORMATION CONTACT:** Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 26, 1991.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91–18214 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–22–M

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) will hold a public meeting of its Groundfish Management Team (GMT). The meeting will be held on August 13–15, 1991, at the Pacific States Marine Fisheries Commission, in the Oregon Department of Fish and Wildlife (ODFW) building, 2501 SW. First Avenue, suite 200, Portland, Oregon. The meeting will begin on August 13 at 9 a.m., continue to August 14 and adjourn on August 15 at 3 p.m. On August 15 only, the meeting will move to the ODFW Director's conference room in the ODFW building.

The GMT will discuss groundfish landings projections, stock assessments for three important groundfish species, and draft social, economic and biological analyses of proposed management changes for 1992. The GMT also will prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

**FOR MORE INFORMATION CONTACT:** Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 26, 1991.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91–18215 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–22–M

## COMMISSION OF FINE ARTS

### Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 19 September 1991 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks etc.; also matters of design referred by other agencies of the government.

Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 26 July 1991.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 91–17283 Filed 7–31–91; 8:45 am]

BILLING CODE 6330–01–M

## COMMISSION ON MINORITY BUSINESS DEVELOPMENT

[91–N–5]

### Commission on Minority Business Development, Hearing

**AGENCY:** Commission on Minority Business Development.

**ACTION:** Notice of meeting and public hearing.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing of the United States Commission on Minority Business Development will be held on Friday, August 16, 1991 in Kansas City, Missouri with a meeting of the Commissioners on Thursday, August 15, 1991. The meeting and hearing are open to the public.

The August 16th hearing will convene at 9 a.m. in the City Council Chambers, 26th Floor of City Hall, 414 E. 12th St., Kansas City, MO. The public hearing is for the purpose of receiving testimony from public and private sector decision-makers and entrepreneurs, professional experts, corporate leaders and representatives of key interest groups and organizations concerned about minority business development and participation in Federal programs and contracting opportunities. Issues of concern will be all issues of the 7(a) and 504 loan programs, 7(j) technical support and 8(a) contracting programs of the Small Business Administration. The meeting of the Commissioners will be held on Thursday, August 15th at the same location commencing at 2 p.m.

The Commission was established by Public Law 100–656, for purposes of reviewing and assessing Federal programs intended to promote minority business and making recommendations to the President and the Congress for such changes in laws or regulations as may be necessary to further the growth

and development of minority businesses.

**FOR FURTHER INFORMATION AND TESTIMONY INFORMATION:** Contact Connie K. McCracken or Leo Salazar at 202–523–0030 at the Commission on Minority Business Development, 750 17th Street NW., suite 300, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** Transcripts of hearings will be available for public inspection during regular working hours at The Commission Office approximately 30 days following the hearing.

**André M. Carrington,**

*Executive Director.*

[FR Doc. 91–18171 Filed 7–31–91; 8:45 am]

BILLING CODE 6820–PB–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States: Changes to the 1991 Correlation

July 26, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Changes to the 1991 Correlation.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1991) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. A notice was published in the **Federal Register** on June 25, 1991 (56 FR 28870) announcing changes to this Correlation, which were published in the first supplement of the Harmonized Tariff Schedule of the United States. The Correlation should be amended further to reflect the changes indicated below:

| Category | Changes to the 1991 Correlation |
|---|---|
| 350 | Delete 6107.91.0010.<br>Add 6107.91.0040—men's bathrobes, dressing gowns and similar articles of cotton, knitted or crocheted.<br>Delete 6107.91.0020.<br>Add 6107.91.0090—boys' bathrobes, dressing gowns and similar articles of cotton, knitted or crocheted. |
| 351 | Add 6107.91.0030—men's or boys' sleepwear of cotton, knitted or crocheted.<br>Add 6207.91.3010—men's or boys' sleepwear of cotton. |
| 352 | Delete 6207.91.3000.<br>Add 6207.91.3020—men's or boys' singlets and other undershirts of cotton. |
| 650 | Delete 6107.92.0010.<br>Add 6107.92.0040—men's bathrobes, dressing gowns and similar articles of MMF, knitted or crocheted.<br>Delete 6107.92.0020.<br>Add 6107.92.0090—boys' bathrobes, dressing gowns and similar articles of MMF, knitted or crocheted. |
| 651 | Add 6107.92.0030—men's or boys' sleepwear of MMF, knitted or crocheted.<br>Add 6207.92.4010—men's or boys' sleepwear of MMF. |
| 652 | Delete 6207.92.4000.<br>Add 6207.92.4020—men's or boys' singlets and other undershirts of MMF. |

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91–18235 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–DR–F

## COMMODITY FUTURES TRADING COMMISSION

### New York Mercantile Exchange Proposed Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contract.

**SUMMARY:** The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in sour crude oil futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before September 3, 1991.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the NYMEX sour crude oil futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYMEX in support of the application by contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on July 29, 1991.

**Gerald Gay,**

*Director.*

[FR Doc. 91–18236 Filed 7–31–91; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Environmental Assessment; Lightweight ExoAtmospheric Projectile

**AGENCY:** Strategic Defense Initiative Organization (SDIO), Department of Defense.

**ACTION:** Environmental Assessment for Lightweight ExoAtmospheric Projectile (LEAP) Test Program.

**SUMMARY:** The Department of Defense (DoD) has prepared a Finding of No Significant Impact based on an

assessment of the potential environmental consequences of conducting LEAP Test Program activities to design, develop, and demonstrate space test projectiles capable of intercepting targets in the exoatmosphere.

*Background*

Pursuant to Council on Environmental Quality Regulations (40 CFR 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and DoD directives on environmental effects of DoD actions, SDIO has conducted an assessment of the potential environmental consequences of conducting the LEAP Test Program to demonstrate the viability of this technology and its applicability to a Strategic Defense System. A series of flight tests is needed to demonstrate and evaluate the advanced technologies necessary to determine whether this potential exoatmospheric interceptor system is feasible. Such a determination cannot be made based on analysis, simulations or ground testing alone.

As currently configured, the LEAP Program will consist of flight experiments with Aries rocket vehicles launched from White Sands Missile Range (WSMR), and U.S. Army Kwajalein Atoll (USAKA); and Castor IV rocket vehicles from Wake Island. Existing launch facilities will be used at these locations. WSMR and USAKA have previously been used to launch Aries vehicles.

Additional activities will be conducted at several locations in the United States in preparation for final assembly and checkout of the launch vehicles. These activities are categorized as component/assembly ground tests (including design, fabrication, and component environmental tests), preflight activities and tests (including component, final assembly and integration), and flight tests. Test activities for the proposed activities will be performed at the following locations:

| Installation | Test type |
|---|---|
| Space Data Division, Orbital Sciences Corporation, Chandler, AZ. | Component/assembly ground tests. |
| Hughes Aircraft Company, Missile Systems Group, Canoga Park, CA. | Component/assembly ground tests. |
| Phillips Laboratory, Edwards Air Force Base, CA. | Component/assembly ground tests. |
| Boeing Aerospace and Electronics, Kent, WA. | Component/assembly ground tests. |
| White Sands Missile Range, NM. | Preflight, flight tests. |
| U.S. Army Kwajalein Atoll, Marshall Islands. | Preflight, flight tests. |
| Wake Island | Preflight, flight tests. |

The potential for significant impacts from launches at WSMR, USAKA, and Wake Island, was determined through an analysis of the activities that would be conducted at the proposed locations, compared to current activities and existing conditions at those locations. The impacts of the proposed action were assessed against the following environmental media: physical setting and built environment; geology and water reserves; air quality; noise; biological resources, threatened and endangered species; cultural resources; infrastructure; hazardous materials and waste; and safety.

**Finding of No Significant Impact**

All potentially significant impacts from LEAP construction/modification, ground, preflight, and flight test activities will be mitigated to non-significant levels by implementing standard plan safeguards. These mitigations have been incorporated into the LEAP Test Program as an integral part of program-related operations at WSMR, USAKA, and Wake Island. Potential land use, water resources, biological, soils, and safety issues could occur as a result of the presence of the liquid fuels.

The LEAP Test Program has adopted spill control, containment and handling and disposal practices that will reduce the risks of releasing liquid propellant into the environment. Appropriate personal protection devices will be used during fueling/defueling and purging operations.

Potential noise impacts from LEAP launches and ground activities will be mitigated by ensuring that personnel wear hearing protection equipment that will reduce noise levels to the prescribed health and safety levels. Furthermore, personnel will be protected from blast noise during launches by moving beyond the calculated safety distance. Base personnel at WSMR, USAKA and Wake Island will not be exposed to noise levels in excess of OSHA allowable short-term limits. Accidental explosion of a rocket booster on the launch pad or shortly after launch could pose a hazard to personnel in the vicinity of the launch area. The Range Safety Officer (RSO) will mitigate the potential for such a hazard by ensuring that the explosive quantity safety distance for each rocket launch is implemented and monitoring the hazard area to prevent unauthorized entry.

In order to minimize potentially significant impacts on the biological environment at WSMR, LEAP launches will operate within operational criteria of on-going activities at the range.

Potential impact from debris recovery will be prevented by retrieving debris by way of access corridors which will be surveyed for threatened and endangered species and cultural resources prior to the recovery of the debris. The corridors will be realigned if necessary to avoid impacts. If unacceptable impacts cannot be avoided, debris will be recovered by helicopter or left in place. Other mitigation measures that will be implemented include: ensuring that no recovery operation will be undertaken at the Salt Creek area, where the White Sands Pupfish is located, without the concurrence of the Chief, Range Support Section, and the Chief, Environmental and Natural Resources Division at WSMR. Under no circumstances will any vehicles enter within 400 meters of Salt Creek unless the Officer in Charge or Noncommissioned Officer in Charge of the recovery team has personally coordinated the matter with the Environmental Chief or his authorized representative.

The No Action Alternative is to discontinue the LEAP Test Program. Additional flights associated with LEAP would not occur at WSMR, USAKA and Wake Island installations. The No Action Alternative for the proposed activity would preclude a series of flight tests needed to demonstrate and evaluate the advanced technologies necessary to determine whether a potential exoatmospheric interceptor system is feasible.

Overall, no significant impacts would result from conducting the LEAP Test Program at WSMR, USAKA, Wake Island, or ground support locations. Therefore, no environmental impact statement will be prepared for the proposed action.

For Further Information Contact: Martha J. Cenkci, Major, USAF, Public Affairs Staff Officer, SDIO/IEA, Washington, DC 20301–7100, (703) 695–8743.

Dated: July 26, 1991.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 91–18190 Filed 7–31–91; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Army

### Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

*Name of Committee:* Board of Visitors, United States Military Academy.

*Date of Meeting:* 12–14 September 1991.

*Place of Meeting:* West Point, New York.

*Start Time of Meeting:* 2000 hours, 12 September 1991.

*Proposed Agenda:* The Board will observe the Academy academic programs in a classroom environment and quality of cadet life with visits and discussions in the cadet barracks. They will discuss the Eisenhower Master Degree Program with the current class of Fellows. The Board will also discuss level of Board participation in achieving the passage of pending legislation. They will receive update briefings on the Cadet Leader Development Program; Military Intersession Program; Project Enrichment; Privatization, and the GAO surveys of the service academies. They will receive a report by the Association of Graduates on plans for the Academy Bicentennial and fund raising.

All proceedings are open. For further information, contact Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

**Stephen R. Furr,**

*Lieutenant Colonel, U.S. Army, Executive Secretary, USMA Board of Visitors.*

[FR Doc. 91–18176 Filed 7–31–91; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.031A, CFDA No. 84.031G]**

### Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1992 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

*Purpose:* Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

*Deadline for Transmittal of Applications:* September 20, 1991.

*Applications Available:* August 16, 1991.

*Eligibility Information:* Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent (FTE) undergraduate student, in comparison with the average E&G expenditures per FTE student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Institutions Program regulations.

*Enrollment of Needy Students:* Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To qualify under the second criterion, an applicant's Pell grant percentage must be more than the median for its category provided on the table in this notice.

*E&G Expenditures Per FTE Students:* An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for 1989–90 is less than the average for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expended by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE for the 1989–90 base year.

| | Median Pell grant percentage | Average E&G per FTE student |
|---|---|---|
| 2-year Public Institutions | 27.33 | 6,006 |
| 2-year Non-Profit Private Institutions | 35.60 | 9,293 |
| 4-year Public Institutions | 28.75 | 10,605 |
| 4-year Non-Profit Private Institutions | 27.20 | 13,319 |

*Waiver Information:* Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waiver of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4 (c) and (d) respectively.

For the purpose of 34 CFR 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1989–90 were from low-income families, "low-income" is defined as an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sizes of families. For the purposes of this waiver provision, low-income families are identified according to the following:

| Size of family | Gross annual family income must be less than |
|---|---|
| 1 | $8,970 |
| 2 | 12,030 |
| 3 | 15,090 |
| 4 | 18,150 |
| 5 | 21,210 |
| 6 | 24,270 |
| 7 | 27,330 |
| 8 | 30,390 |

For all families with more than 8 members, add $3,060 for each additional member.

| Size of family | Family income must be less than |
|---|---|
| 1 | $11,220 |
| 2 | 15,045 |
| 3 | 18,870 |
| 4 | 22,695 |
| 5 | 26,520 |
| 6 | 30,345 |
| 7 | 34,170 |
| 8 | 37,995 |

For family units with more than 8 members, add $3,825 for each additional member.

| Size of family | Family income must be less than |
|---|---|
| 1 | $10,305 |
| 2 | 13,830 |
| 3 | 17,355 |
| 4 | 20,880 |
| 5 | 24,405 |
| 6 | 27,930 |
| 7 | 31,455 |
| 8 | 34,980 |

For family units with more than 8 members, add $3,525 for each additional member.

The figures shown under family income represent amounts equal to 150% of the family income levels established by the U.S. Bureau of the Census for determining poverty status. These levels were published by the U.S. Department of Health and Human Services in the **Federal Register** of February 16, 1989, Volume 54, Number 31, pages 7097–7098.

In reference to the waiver option specified in section 607.3(b)(4) of the regulation, information about "metropolitan statistical areas" may be obtained by contacting: *National Technical Information Services,* Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, or call (703) 487–4650. Title METROPOLITAN STATISTICAL AREAS, 1989 #PB89–192546.

*Applicable Regulations:* Regulations applicable to the eligibility process include: (a) the Strengthening Institutions Programs, 34 CFR part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR part 628; and (c) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 82, 85, and 86.

*For Applications or Information Contact:* Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, Maryland Avenue, SW., room 3042, ROB#3, Washington, DC 20202–5335, telephone: (202) 708–8839. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

**Program Authority:** 20 U.S.C. 1057 and 1065a.

Dated: July 25, 1991.

**John B. Childers,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 91–18207 Filed 7–31–91; 8:45 am]

BILLING CODE 4000–01–M

## National Council on Education Standards and Testing; Meeting

**AGENCY:** National Council on Education Standards and Testing; Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and agenda of a forthcoming meeting of the National Council on Education Standards and Testing. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATE AND TIME:** Augst 15, 1991 from approximately 10 a.m. to 4:30 p.m.

**ADDRESS:** Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David Stevenson, 1850 M Street, NW., suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

**SUPPLEMENTARY INFORMATION:** The National Council on Education Standards and Testing is established under section 403 of the Education Council Act of 1991 (20 U.S.C. 1221–1 note). The Council is established to provide advice on whether suitable specific education standards should and can be established and whether an appropriate system of voluntary national tests or examinations should and can be established.

The meeting of the Council is open to the public. The agenda is likely to include an update on the Council's activities and general discussion on standards assessment, including a discussion of professional teaching standards.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Council, 1850 M Street, NW., Washington, DC 20036 from the hours of 9 a.m. to 4 p.m.

Dated: July 29, 1991.

**Diane Ravitch,**

*Assistant Secretary and Counselor to the Secretary, Educational Research and Improvement.*

[FR Doc. 91–18330 Filed 7–31–91; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

## Financial Assistance Award; Intent To Award Grant to J. Hilbert Anderson

**AGENCY:** Department of Energy.

**ACTION:** Notice of unsolicited application financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to J. Hilbert Anderson, a licensor, under Grant Number DE–FG01–91CE15535. The proposed grant will provide funding in the estimated amount of $99,970 to the proposed grantee to analyze and optimize the Anderson-Quin Cycle to determine its technical performance and economic value. Sufficient data will be generated to demonstrate the feasibility of taking the next step, which will be to construct and test a prototype Anderson Quin-Cycle system. The Anderson-Quin Cycle is a combined cycle for power generation and consists of five sub-cycles: A refrigeration cycle, a gas turbine cycle, a Rankine steam cycle, a bottoming cycle, and a heat pump. The five cycles combine to give increased power production at a greater overall efficiency. However, at this stage, until a prototype is built and tested, it is difficult to quantify the magnitude of the energy savings. The purpose of the grant will be to assess feasibility of building the prototype.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by J. Hilbert Anderson is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The proposed grantee is using a technique for which a patent has been obtained. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, The Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The proposed technology has a possibility of adding to the national energy resources by utilizing low-temperature heat. This will therefore reduce electrical power generation costs.

The anticipated term of the proposed grant is eighteen months from the effective date of award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of

Placement and Administration, ATTN: Phyllis P. Morgan, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Operations Division "B", Office of Placement and Administration.*

[FR Doc. 91–18293 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

## Financial Assistance Award Intent to Award Grant to The University of Kansas

**AGENCY:** Department of Energy.

**ACTION:** Notice of unsolicited application financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(l) to the University of Kansas under Grant Number DE-FG01–91CE15511. The proposed grant will provide funding in the estimated amount of $95,000 for the University of Kansas to complete the development leading to commercialization of a highly promising new enhanced oil recovery technology that can more selectively block off non-producing channels in the oil-bearing strata, improving the ability to sweep oil toward the production zone, and thus cause more oil to be brought to the surface. The invention is a polymer that reversibly gels in an acidic environment or becomes soluble in water and that can be easily initiated and simply controlled by changing its acidity, i.e., its physical condition. It does not require chemically modifying the polymer, which is difficult to control and which competitive processes require, and would have particular application in enhanced oil recovery.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the University of Kansas is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligble for financial assistance under a recent, current or planned soliciation. The University of Kansas, a licensor of Columbia Resources, Inc., is using a technique for which one patent has been issued, and another is pending for developing the process that would improve the yield in enhanced oil recovery. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The proposed technology has the possibility of adding to the national energy resources. Secondary recovery, including water polymer flooding, accounts for about one-third of the domestic crude oil production, i.e., 10 bbl of oil per year. If applying the proposed polymer process causes only a 1 percent increased sweep efficiently, the domestic oil productioin would be increased by 10 bbl of oil per year.

The anticipated term of the proposed grant is eighteen months from the effective date of award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy Office of Placement and Administration ATTN: Phyllis P. Morgan, PR–322.2 1000 Independence Avenue, S.W. Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Operations Division "B", Office of Placement and Administration.*

[FR Doc. 91–18294 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

## Notice of Proposed Power Rate; Opportunities for Public Review and Comment

**AGENCY:** Southwestern Power Administration (Southwestern), Department of Energy (DOE).

**ACTION:** Notice of Robert D. Willis Power Rate and opportunities for public review and comment.

**SUMMARY:** The Administrator, Southwestern, has prepared Current and Revised 1991 Power Repayment Studies for the Robert D. Willis project which show the need for increases in annual revenues to meet cost recovery criteria. These increased revenues are needed to cover increased annual expenses for marketing, additions to plant, major replacements and the operation and maintenance of the generating facilities. The amortized expenses incurred for the project's design and construction are not included in the Robert D. Willis cost recovery rate calculation because those project costs were financed in total by the project's sponsor, Sam Rayburn Municipal Power Agency (SRMPA). The Administrator has also developed a proposed rate schedule for the isolated Robert D. Willis project to recover the required revenues. The proposed rate for the Robert D. Willis project would increase annual revenues approximately 9.5 percent from $373,068 to $408,648 beginning October 1, 1991.

**DATES:** Written comments are due on or before September 3, 1991.

**ADDRESSES:** Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Morin, Acting Director, Administration and Rates, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7439.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Robert D. Willis project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kW hydroelectric generating units. It, like the Sam Rayburn Dam project, is marketed as an isolated project under a contract through which the customer, SRMPA, receives the entire output of the project for a period of 50 years as a result of funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its being

hydraulically, electrically, or financially isolated operation.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a current power repayment study for the Robert D. Willis project using the existing annual rate of $373,068. The study indicated that the legal requirements to repay the power investment with interest will not be met without additional revenue, primarily as a result of increased annual expenses experienced by the Corps of Engineers at the project. The Reviewed Power Repayment Study for the isolated Robert D. Willis project shows that an additional $35,580 (a 9.5 percent increase) annually is needed to satisfy repayment criteria. This increase would change annual revenues produced by the Robert D. Willis project from $373,068 to $408,648 and satisfy the present financial criteria for repayment of the project.

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Robert D. Willis project. If you desire a copy of the Repayment Study Data Package for the Robert D. Willis project, please do not hesitate to submit your request to: Mr. Richard F. Morin, Acting Director, Administration and Rates, P.O. Box 1619, Tulsa, OK 74101, (918) 581–7439.

Following review of the written comments, the Administrator will submit the rate proposal and the Power Repayment Studies for the Robert D. Willis project, in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 24th day of July, 1991.

**Charles A. Borchardt,**

*Acting Administrator, Southwestern Power Administration.*

[FR Doc. 91–18161 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

## Bonneville Power Administration

### Benton County Public Utility District, Point of Delivery at Prosser Substation; Notice of Proposed Floodplain Action

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of proposal by customer to construct a substation within the Yakima River floodplain in the City of Prosser, Benton County, Washington.

**SUMMARY:** To serve the expanding industrial loads in the west end of the City of Prosser, Washington, BPA is proposing to grant a new Point of Delivery (POD) at BPA's existing Prosser Substation in response to a request by Public Utility District No. 1 of Benton County (BCPUD). BCPUD is proposing to construct a 115-kV/12.5 kV, 25-MVA Substation in west Prosser and to connect that substation to BPA's Prosser Substation with a ¾-mile, 115-kV transmission line. BCPUD's proposed substation site is within the 100-year floodplain of the Yakima River..

**FOR FURTHER INFORMATION CONTACT:** John M. Taves, Environmental Coordinator for Engineering, Bonneville Power Administration, P.O. Box 3621-EFBC, Portland, Oregon 97208; telephone (503) 230–4995.

**SUPPLEMENTARY INFORMATION:** BCPUD is proposing to build the substation within the 100-year floodplain because there are only two qualified sites available close to the load to be served. It would be much more difficult to get transmission lines to the other site and it may contain hazardous waste from a former cement plant.

Impact to the floodplain can be avoided. BCPUD plans to shift existing soil, rather than add any new fill. BCPUD will construct an oil containment structure around the transformer.

BPA is preparing an Environmental Assessment (EA) to meet National Environmental Policy Act requirements. The EA will include BCPUD's (Washington) State Environmental Policy Act (SEPA) checklist and will be available for public review by August 9, 1991.

Issued in Portland, Oregon, on July 17, 1991.

**Steve Hickok,**

*Acting Administrator, Bonneville Power Administration.*

[FR Doc. 91–18296 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

### Record of Decision on a Contract To Effect a Joint Venture Among the Bonneville Power Administration and the Pacific Northwest Generating Company

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Record of decision (ROD).

**SUMMARY:** BPA has decided to enter into a new contract with the Pacific Northwest Generating Company (PNGC). The contract principally involves the transfer of power from a thermal resource, which because of its variable cost is likely to operate in any event, to a market outside of the region. This contract will be part of a joint venture power transaction in which BPA will be providing 52 megawatts (MW) of assured delivery over the Intertie to PNGC beginning on June 15, 1991, and ending on September 30, 1991, the first year, and from June 15 through August 31 in the remaining 3 years. The first year, PNGC will use this assured delivery to sell its share of the Boardman coal-fired generating plant to the Sacramento Municipal Utility District (SMUD). PNGC will have to secure other purchasers of this power for the remaining years of the contract. When the Intertie is being operated under Conditions 1 or 2, BPA can offer to PNGC and PNGC must accept energy in an amount equal to the amount PNGC is selling to a California utility. BPA will also continue deliveries to the California utility in the event of an outage at the Boardman plant for up to 4 hours. In the event PNGC finds a long-term (i.e., 20 years) purchaser of its share of the Boardman plant, PNGC can terminate the agreement by giving notice by January 15 of any year. At those times of year when PNGC is not provided with assured delivery under terms of this contract, PNGC's share of Boardman output will be purchased by BPA at rates beginning at 20 mills per kilowatt-hour and escalating to 22 mills per kilowatt-hour.

The potential environmental effects of this decision to participate in this joint venture and enter into these contracts are addressed in the Intertie Development and Use Final Environmental Impact Statement (IDU Final EIS, DOE/EIS–0125F). The IDU Final EIS analyzed the environmental effects of various extraregional firm marketing activities, such as the contract effecting this joint venture. The alternative actions considered in the EIS were: (1) To take no action, i.e., not to enter into firm contracts with extraregional entities or for joint ventures involving regional and extraregional utilities; and (2) to enter into a variety of firm contracts including joint ventures with features like those contained in the contracts with PNGC. In making this decision, full consideration was given to environmental, economic, and legal factors.

Except for potential effects on resident fish and cultural resources, the IDU analyses indicated no significant

adverse environmental impacts in the Pacific Northwest (PNW), California, Inland Southwest (ISW), or British Columbia as a result of BPA's proposal to participate in joint ventures for firm sales or exchanges outside the PNW. In consultation with the U.S. Fish and Wildlife Service and the State of Montana, BPA is funding imprint planting and habitat improvements on Hungry Horse Reservoir tributaries to preclude potential adverse impacts on resident fish, an important food source for bald eagles. To mitigate for potential adverse effects on cultural resources at the five major Federal storage reservoirs studied, BPA is developing a Programmatic Memorandum of Agreement (PMOA) with appropriate parties. This PMOA will fully satisfy BPA's National Historic Preservation Act obligations. All other consultation, review, and permit requirements have been met. All practicable means to avoid or minimize environmental harm from BPA's firm marketing activities identified in the IDU EIS have been, or are in the process of being, adopted.

The joint venture with PNGC has a net benefit to BPA of about $450,000 per year from wheeling revenues and being able to purchase energy for 2 to 5 mills per kilowatt-hour below the market value of Boardman power.

BPA's contract with PNGC is consistent with applicable legislation, including Public Law (Pub. L.) 88–552, 16 U.S.C. 837–837h (Northwest Preference Act), and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (Northwest Power Act). It is also consistent with Contract No. DE–MS79–89BP92022 (Settlement Agreement) which settled litigation related to Intertie access by nonscheduling utilities.

Entering into the joint venture with PNGC is the environmentally preferred alternative because of slight near-term reductions in air pollution in densely populated areas in California, reduced near-term consumption of nonrenewable oil and gas fuels, and the added potential to defer building new resources in California.

**FOR FURTHER INFORMATION CONTACT:** Nanci Tester, Chief, Environmental Compliance Section—PGA, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; telephone (503) 230–3078. For copies of documents mentioned in this notice (the IDU Draft and Final EISs), the Hydro Operations Information Paper, the Long-Term Intertie Access Policy (LTIAP) and its ROD, the DC (Direct Current) Terminal Expansion ROD, the Third AC (Alternating Current) ROD, the Southern California Edison ROD, and the M-S-R Public Power Agency (representing the cities of Modesto, Santa Clara and Redding, California ROD), you may contact BPA's Public Involvement office at 503–230–2378. Oregon callers may use 800–452–8429; caller in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048.

**SUPPLEMENTARY INFORMATION:**

## I. Major Features of the Contracts

*Term.* The contract will terminate on April 30, 1995, unless terminated earlier by PNGC. BPA will provide firm transmission over the Intertie to PNGC beginning on June 15, 1991, and ending on September 30, 1991 the first year, and from June 15 through August 31 in 1992, 1993, and 1994. BPA will purchase energy from PNGC from October 1, 1991 through April 30, 1992, the first year, and September 1, through April 30 in the remaining 3 years. PNGC can give BPA written notice by January 15 and this agreement will terminate April 30 of that year. If PNGC terminates the purchase the Intertie transmission also terminates.

*Amount.* The Intertie transmission demand is 52/MW. The share of Boardman being purchased by BPA is approximately the same amount.

*Conditions.* During the periods that BPA is providing Intertie transmission to PNGC and the Intertie is being operated under Conditions 1 or 2 as defined in BPA's LTIAP, BPA can offer to PNGC and PNGC must accept an amount of energy equal to the amount PNGC is selling to a California utility. BPA will also continue deliveries to the California utility for up to 4 hours in the event Boardman generation is forced off, and, at BPA's option, PNGC will purchase that energy at the standard rate or return the energy to BPA on the same hours 24 hours later.

*Rate.* The rate BPA initially will pay for purchasing energy from PNGC is 20 mills per kilowatt-hour. This rate escalates to 21 mills per kilowatt-hour in the third year and to 22 mills per kilowatt-hour in the fourth.

## II. Decision

BPA has decided to sign a contract, as described above, with PNGC to effect a joint venture under which PNGC would deliver energy to California utilities (initially SMUD) using BPA's Intertie for part of the year, and BPA would purchase that energy for the remainder of the year.

## III. Background

In the fall of 1984, BPA began preparing the IDU Draft EIS to address actions related to several power system proposals: (1) Adoption of a LTIAP; (2) potential export marketing arrangements; and (3) expansion of Intertie capacity. The IDU Draft EIS was issued on October 31, 1986. The need for the actions addressed by the IDU Draft EIS included managing the transfer of surplus power between the PNW and California (see IDU Draft EIS, p. 1–1). The joint venture BPA is participating in with PNGC is an export marketing arrangement of a type analyzed in the IDU Draft EIS.

The IDU Draft EIS used computer models to simulate the operation of the PNW combined thermal and hydropower system and the resulting potential impacts of fish, recreational resources, cultural resources, irrigation, air and water quality, land use, and nonrenewable resources. As a result of comments received during a 78-day public comment period, some changes were made in the models.

On November 13, 1987, BPA published the Hydro Operations Information Paper. This paper was based on an analysis of computer simulations produced by the revised, updated computer models. The paper included analyses of the effects of long-term extraregional firm marketing on anadromous and resident fish, recreational resources, and cultural resources. The results of these analyses were similar to the results shown in the IDU Draft EIS. Public review and further BPA analysis did not reveal any significant new information, so BPA completed its IDU Final EIS and filed it with the U.S. Environmental Protection Agency on April 8, 1988. A ROD on one of the proposed IDU Draft EIS actions, the adoption of a LTIAP, was signed by the Administrator on May 17, 1988.

## IV. Alternatives

BPA considered two alternatives: (1) take no action—do not enter into such agreements as the contracts effecting the joint venture with PNGC; and (2) enter into contracts for marketing capacity in a manner which would effect joint ventures such as that with PNGC.

## V. Decision Factors and Issues

In arriving at the decision to enter into the contract with PNGC, environmental, economic, and legal factors were considered.

### *A. Environmental Factors*

In the IDU Final EIS, BPA analyzed how various extraregional long-term firm contract scenarios, including Federal marketing, could be expected to affect the quality of the human environment. The joint venture with

PNGC represents only a small portion of the 3150 MW (capacity) of generic firm contracts analyzed in the EIS. Therefore, only a small portion of any environmental impacts from Federal marketing activities could be attributed to the joint venture. On the other hand, if BPA took no action, there would be no change in the environmental status quo in the Northwest. The Boardman plant is likely to operate in either event because of its competitive variable cost.

1. Impacts on Fish, Wildlife, and Vegetation Related to Operation of Pacific Northwest Hydroelectric Resources

Under the Northwest Power Act, BPA must protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries. BPA must conduct its river operations in a manner that provides for equitble treatment for fish and wildlife. Firm extraregional marketing activities were found in general to have no significant effect on anadromous fish and vegetation. Potential adverse effects on resident fish, an important food source for bald eagles, at Hungry Horse Reservoir will be mitigated by imprint planting, habitat improvement, and monitoring.

Commenters on the IDU Draft EIS and Hydro Operations Information Paper stated that the potential for significant adverse effects on resident and anadromous fish, wildlife, and cultural resources from firm marketing activities was a major environmental concern. Some expressed concern that the methodology BPA used to analyze impacts on anadromous fish underpredicts, incorrectly predicts, or is too uncertain to predict these impacts.

BPA performed extensive analyses on how various firm marketing activities could affect fish. Results are reported in the IDU Final EIS. BPA believes that the System Analysis Model (SAM) and the FISHPASS model used for the IDU Final EIS constitute the best available methodology for analysis of impacts on anadromous fish caused by operation of the hydrosystem. Sensitivity analyses were performed to test the uncertainty of the model results with respect to key FISHPASS model parameters, bypass system assumptions, and key SAM assumptions. These analyses showed that, when used for a comparative analysis (i.e., when comparing fish survival under one alternative versus another), variations in the key assumptions tested made little difference. Therefore, much of the uncertainty of the FISHPASS model parameters is not critical to the study results for changes in survival associated with the alternatives addressed in the IDU Final EIS (see IDU Final EIS, pp. 4.2.3–23 through 4.2.3–32, and Appendix E, Part 6). The effects of firm marketing activities on anadromous fish survival were found to be small and are not expected to be significant provided planned fish passage improvements are made at the mid-Columbia Public Utility District (PUD) projects (see IDU Final EIS, pp. 4.2.3–35).

BPA's reliance on the accomplishment of planned fish passage improvements at Federal and public utility dams on the Columbia and Snake Rivers, to preclude potential significant impacts on anadromous fish, was an issue raised by several commenters in the IDU Draft EIS process. The potential effects of failure to install planned fish passage facilities were addressed in four sensitivity analyses (see IDU Final EIS, pp. 4.2.3–33 through 2.3–34). In the first, bypass installation was delayed 3 years beyond the dates assumed in BPA's principal analysis. In the second, planned new bypass systems at The Dalles and Ice Harbor Dams were assumed to be forgone. In the third, an assumption was made of no new planned bypass systems at The Dalles, Ice Harbor, and Lower Monumental Dams. The fourth sensitivity test assumed no additional new bypass systems and no improvements of existing systems at any of the dams.

The predicted effects of firm marketing activities under these various conditions were not significantly different from what was described in the IDU Final EIS. However, sensitivity analyses did indicate that failure to construct the planned mid-Columbia bypass facilities, in conjunction with firm marketing activities, could impact Methow River spring chinook (see IDU Final EIS, p. 4.2.3–35).

Since the Final EIS was prepared, bypass installation has been delayed beyond what was assumed in the IDU FEIS Base Case for Wanapum and Priest Rapids. Prototype testing of fish screens began April 1990, at Wanapum Dam. Construction of the bypass facility is scheduled to begin in 1992, and is expected to be completed at Wanapum in 1997. Screens may not be installed at Priest Rapids Dam pending a Federal Energy Regulatory Commission hearing which began in March 1991, and is currently in progress, to determine whether or not screens must be installed at Priest Rapids, or if transportation is acceptable for moving fish from Wanapum to below Priest Rapids Dam. If transportation around Priest Rapids is acceptable, it can begin as soon as screened units come on line at Wanapum. Otherwise, screens will still be installed at Priest Rapids but at a later time.

In addition, the installation of a bypass facility will not be feasible at the Rock Island second powerhouse. It should be noted that studies have shown the mortality of juvenile fish passing through the bulb turbines at Rock Island to be only 3 to 5 percent, compared to the estimated mortality of 15 percent at other dams. The impact to Methow River spring chinook from delayed installation of bypass at Wanapum and Priest Rapids is not quantifiable, but is thought to be very small, especially in view of the fact that prototype testing of screens at Priest Rapids, which is expected to be the same or better at Wanapum, has shown a fish guidance efficiency averaging 78 percent for yearling chinook.

Adult spring chinook returning to the Methow River are a mixture of fish from the Winthrop National Fish Hatchery and wild fish. The stocks have shown improvements in recent years with each years' run having about 600 returning adults. Although improvements are promising, Methow stocks, like many upriver stocks, are still considered depressed and unavailable for harvest. There has not been direct sport or Indian harvest of the Methow River spring chinook stocks. Columbia River sport, commercial, and Indian spring chinook fisheries are regulated to harvest minimum numbers of upriver stocks. Therefore, it is assumed that no significant numbers of Methow spring chinook are taken in any fishery. The Methow River wild stock is managed throughout its life-cycle as a potentially critical hatchery supplemented stock.

An analysis also was conducted to assess the impacts of firm marketing activities on the ability to coordinate fall and spring flow levels to facilitate successful adult spawning and fry emergence within the Hanford Reach. No significant effects were found (see IDU Final EIS, p. 4.2.3-41).

The Shoshone-Bannock Indian Tribes have petitioned the National Marine Fisheries Service (NMFS) to list Snake River sockeye salmon as a threatened or endangered species under the Endangered Species Act (ESA). Oregon Trout and others have also petitioned NMFS to list Snake River chinook and lower Columbia River coho salmon. NMFS has requested BPA to consider the status of Snake River sockeye salmon in each of the agency's actions that could affect the sockeye.

On April 2, 1991, NMFS announced its intent to propose the Snake River sockeye be listed as an endangered

species. BPA is committed to working with others in the region to rebuild the salmon runs. BPA has developed a comprehensive action plan for actions it is willing to undertake in 1991, and is in the process of developing a long-term strategy.

BPA's stock assessment, in the IDU Final EIS, did not include Snake River sockeye salmon because they were not considered a viable population. However, the FISHPASS analyses did evaluate changes in relative survival of sockeye salmon entering Lower Granite pool. Firm marketing actions had no effect on Snake River sockeye salmon (see IDU Final EIS, Appendix E, part 5). BPA finds that NMFS' proposal is not a significant change in circumstances and does not constitute significant new information since the IDU FEIS was published. No supplement to the FEIS is necessary. NMFS' proposal to list the Snake River sockeye salmon as an endangered species does not change the conclusion drawn from the IDU FEIS that firm marketing actions would not affect the species. The proposed listing would not change any of the assumptions or data used in the analysis for the IDU FEIS, nor make the analytic methodology any less valid.

BPA also examined the impacts of firm marketing actions on Snake River spring, summer and fall chinook salmon, and coho salmon originating in the Bonneville pool. It was determined that firm marketing actions did not significantly impact these stocks.

BPA is working closely with NMFS to develop a comprehensive strategy. The work to date has been designed to fit within the NMFS schedule and to meet the needs of the Northwest's salmon and steelhead in as timely a fashion as possible.

With regard to resident fish production in PNW reservoirs, long-term firm power contracts, such as Federal marketing, do affect reservoir elevations. Elevations generally are lower in the fall and winter months. There are potential adverse impacts on resident fish in Hungry Horse Reservoir, where monthly average reservoir levels drop by as much as about 5 feet during the critical months of September through November (see IDU Final EIS, pp. 4.2.3-12 through 4.2.3-14). Mitigation to avoid these impacts is discussed later in this ROD.

Wildlife and vegetation around the reservoirs are not expected to be affected significantly, since changes in reservoir operations are expected to be small and are within reservoir operating constraints (see IDU Final EIS, p. 4.2.5-1). BPA completed informal consultation with the U.S. Fish and Wildlife Service on endangered and threatened species. BPA determined that firm marketing activities were not likely to adversely affect any threatened and endangered species. The U.S. Fish and Wildlife Service concurred with BPA's biological assessment.

2. Impacts on Water Quality and Fish in British Columbia

BPA found no adverse impacts on water quality and fish in British Columbia due to firm marketing activities. Anadromous fish do not exist in the Columbia or Peace River systems within British Columbia. Because firm marketing activities have only minor effects on reservoir levels and flows on the Peace River reservoirs and Columbia River reservoirs in British Columbia, impacts on resident fish are not expected to be significant (see IDU Final EIS, pp. 4.2.4-4 through 4.2.4-9).

3. Impacts on Irrigation

BPA found no adverse impacts on irrigation due to firm marketing activities. Levels of allowable irrigation withdrawals are determined by the States and are established water rights. Hydro operations planning is developed around flows that include authorized irrigation withdrawals. Therefore, firm marketing activities would not affect the amount of water available for irrigation (see IDU Final EIS, pp. 4.2.2-4 through 4.2.2-6).

4. Impacts on Recreation

No adverse impacts on recreation were found from firm marketing activities. Projected changes in reservoir levels associated with firm marketing are small, especially during the summer recreation season, and result in minimal recreation impacts at all the reservoirs studied. Changes in downstream flows also are projected to have no significant effects (see IDU Final EIS, p. 4.2.2-4).

5. Impacts on Cultural Resources

Changes in reservoir levels (within existing constraints) at hydroelectric projects might have effects on cultural resources in and around Federal storage reservoirs in the PNW. These reservoirs are Grand Coulee (Lake Roosevelt); Dworshak; Libby (Lake Koocanusa); Albeni Falls (Lake Pend Oreille); and Hungry Horse. Many cultural resource sites in the areas of potential effect already have been and continue to be affected by erosion and vandalism. Changes in reservoir elevations may change the rate of site erosion and may make sites more or less accessible to vandals.

Known properties on or eligible for the National Register of Historic Places on these reservoirs are the Middle Kootenai River Archeological District at Lake Koocanusa, Montana, and the Kettle Falls Archeological District and the Fort Spokane Historic District at Lake Roosevelt, Washington.

Information about the existence and significance of cultural resources within the area of potential effect is incomplete. It is possible that other potentially affected properties may be eligible for the National Register.

Analysis of the data in the IDU Final EIS indicates that increased erosion of cultural resource sites at Libby Reservoir could have been a potential problem with firm marketing activities in 1988, the earliest year studied. Analyses were conducted to address both wave erosion effects and effects on site accessibility for vandals and relic collectors. Libby will continue to be operated according to project constraints used in Coordination Agreement planning and constraints provided by the U.S. Army Corps of Engineers (Corps). The initiation of a Programmatic Agreement to mitigate potential impacts on cultural resources caused by firm marketing activities, as well as other power marketing activities analyzed in the IDU Final EIS, is discussed later in this ROD under Mitigation and Monitoring.

Other hydroelectric project reservoirs in the Federal Columbia River Power System are operated either as run-of-river or primarily for flood control and are generally independent of power marketing activities. Therefore, Federal marketing activities will not affect cultural resources at these projects (see IDU Final EIS, pp. 4.2.2–7 through 4.2.2–8, and 4.6–1 through 4.6–2).

6. Nonrenewable Resource Use and Land Use Impacts

No adverse impacts on nonrenewable resource use and land use were found from firm marketing activities. Differing levels of long-term firm contracts have negligible impacts on PNW coal generation. Hence, impacts on coal consumption and associated land disturbance also are negligible (see IDU Final EIS, p. 4.3.1–3).

Annual coal use in the ISW is projected to increase slightly with firm marketing (see IDU Final EIS, pp. 4.3.1–5 and 4.3.1–20). Gas and oil consumption in California is not significantly affected by firm marketing activities. During the early years, however, there is a slight reduction in consumption of gas and oil fuels (see IDU Final EIS, pp. 4.3.1–4 and 4.3.1–15).

7. Air Quality and Solid Waste Impacts

No adverse impacts were found in the PNW, California, or the ISW. Air quality impacts related to power system operational effects of firm marketing activities were found to derive from changes in the operation of coal-fired power plants in the PNW and the ISW and changes in the operation of gas- and oil-fired generating plants in California. All projected ambient air quality changes due to firm marketing activities are small (see IDU Final EIS p. 4.3.2–13). In the early years, these changes do include small reductions in air pollution in densely populated air basins in California.

Solid waste impacts vary with changes in annual generation at coal-fired plants. Solid waste impacts from altering coal plant operations to accommodate firm marketing activities are not considered significant (see IDU Final EIS, p. 4.3.2–7 and appendix G).

8. Water Use and Quality Impacts of Thermal Plants

No adverse impacts on water use and water quality in the PNW, California, or the ISW were found. The only potentially significant problem areas identified were entrainment at the Pittsburg and Contra Costa thermal plants in California. It was not possible to determine quantitatively how firm marketing activities would affect these entrainment problems. However, since the average annual generation at these plants is reduced with firm marketing activities, it is unlikely that the entrainment would be made worse (see IDU Final EIS, pp. 4.3.3–8 through 4.3.3–13).

9. Impacts on Vegetation and Wildlife Related to Thermal Plant Operational Changes

No adverse impacts in the PNW, California, or the ISW were found from firm marketing activities. This is primarily because air quality, acid deposition, solid waste, and water consumption impacts of the coal-fired plants considered in the analysis are not significant. In addition, because of permit requirements, enforcement of compliance with permits, and the fact that effects on threatened and endangered species must be considered before permits are granted, firm marketing activities will not cause significant adverse effects to any threatened or endangered species (see IDU Final EIS, p 4.3.4–2).

Nuclear plant operations are not expected to be affected (see IDU Final EIS, p. 4.1–14). Therefore, firm marketing should not change the impacts on vegetation and wildlife from operation of nuclear plants.

10. Impacts Related to Development of New Power Resources

Firm marketing activities were found to have virtually no effect on the development of future PNW resources (see IDU Final EIS, p. 4.4–7). Joint ventures of the nature of that with PNGC may slightly delay the need for development of new resources in California.

11. Consultation, Review, and Permit Requirements

In addition to their responsibilities under the National Environmental Policy Act (NEPA), Federal agencies are required to carry out the provisions of other Federal environmental laws. The Federal government is required to take State and local government environmental and land-use laws and regulations into consideration when making its decisions (see IDU Final EIS pp. 4.6–1 through 4.6–3). Throughout preparation of the IDU Drafts EIS, the Hydro Operations Information Paper, IDU Final EIS, and the LTIAP, BPA worked closely with the Corps, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the Columbia River Inter-Tribal Fish Commission to ensure that its responsibilities under NEPA and other appropriate laws and regulations were fulfilled.

*B. Economic Factors*

The joint venture with PNGC has a net benefit to BPA of about $450,000 per year. The benefit arises from wheeling revenues and ability to purchase Boardman power at 2 to 5 mills per kilowatt-hour below its normal market price.

*C. Legal Factors*

BPA's contract with PNGC is consistent with applicable legislation, including Public Law (Pub. L.) 88–552, 16 U.S.C. 837–837h (Northwest Preference Act), and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (Northwest Power Act). It is also consistent with Contract No. DE–MS79–89BP92022 (Settlement Agreement) which settled litigation related to Intertie access by nonscheduling utilities.

**VI. Environmentally Preferred Alternative**

The environmentally preferred alternative is for BPA to enter into the proposed contract effecting the joint venture with PNGC. In the event a BPA deficit does occur and the resource is needed to serve BPA loads, deliveries of power would occur largely outside the periods most critical to fish passage on the Columbia and Snake River systems. However, the fact that, with the joint venture, a share of Boardman power is available to BPA for part of the year will make operating the FCRPS to meet the needs of fish easier rather than more difficult. There will be no significant adverse impacts from this action. Even with the delay of bypass facilities at Wanapum until 1997; the delay of, or possible substitution of transportation for, bypass facilities at Priest Rapids; and the infeasibility of bypass at Rock Island, significant adverse impacts on anadromous fish are not expected. Mitigation activities are being implemented for resident fish at Hungry Horse Reservoir to preclude significant adverse impacts on bald eagles which rely on the fish for food. And impacts on cultural resources at the five Federal storage projects from power generation in general will be mitigated through the conduct of critical resource surveys and, where indicated, excavation or preservation of artifacts. In addition, this alternative has some slight environmental benefits not achievable under the No-Action Alternative. These benefits are: (1) Small reductions in air pollution in densely populated air basins in California; (2) reduced consumption of nonrenewable gas and oil fuels in the early years; and (3) slight potential for additional deferral of the construction of new generating resources in California and their subsequent operation.

**VII. Conclusion**

Because the proposed joint venture is the environmentally preferred alternative, would achieve economic benefits for BPA and presumably others, and is consistent with statutory guidelines, BPA's decision is to enter into the previously described contract.

**VIII. Environmental Mitigation and Monitoring**

Several mitigation and monitoring actions are being adopted to preclude potential environmental impacts from this decision. These actions include programs to: (1) Survey resident fish populations at Hungry Horse Reservoir to assure that an adequate food supply is maintained for the bald eagles living in or passing through the area; and (2) survey and evaluate cultural resource sites surrounding Federal storage reservoirs on tributaries to the Snake and Columbia Rivers (Dworshak, Albeni Falls, Libby, and Hungry Horse) and on the mainstem Columbia (Lake Roosevelt, behind Grand Coulee Dam).

BPA expects to preclude significant adverse impacts to resident fish at Hungry Horse Reservoir by undertaking measures to increase use of Hungry Horse tributaries by resident fish. BPA consulted with the U.S. Fish and Wildlife Service and the Montana Department of Fish, Wildlife, and Parks in developing these measures. Measures include funding for imprint planting of westslope cutthroat trout and mountain whitefish in four Hungry Horse Reservoir tributaries over a 5-year period. Also included is funding for offsite fish habitat improvements on Flathead River sloughs, including cleaning of spawning gravels and imprint planting of cutthroat trout, kokanee, and mountain whitefish (see IDU Final EIS, p. 4.2.3–13). If monitoring studies at Hungry Horse Reservoir indicate that significant adverse effects on resident fish are occurring as a result of Intertie actions, including Federal marketing activities, information from these monitoring studies will be used to develop and implement additional effective mitigation measures.

In order to mitigate for potential adverse effects on cultural resources at the Federal storage reservoirs, BPA has initiated procedures to develop a Programmatic Agreement with the Advisory Council on Historic Preservation; the Idaho, Montana, and Washington State Historic Preservation Officers; the Bureau of Reclamation; and the Corps. Also involved in developing the Programmatic Agreement are the Confederated Tribes of the Colville Reservation in Washington; the Spokane Tribe of the Spokane Reservation in Washington; the Kalispel Indian Community of the Kalispel Reservation in Washington; the Coeur D'Alene Tribe of the Coeur D'Alene Reservation in Idaho; the Nez Perce Tribe of Idaho; the Kootenai Tribe of Idaho; the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; the Bureau of Indian Affairs; the U.S. Forest Service; and the National Park Service.

The Programmatic Agreement was initiated as mitigation for potential effects of firm marketing transactions. It will, however, satisfy BPA's responsibilities under section 106 of the National Historic Preservation Act (16 U.S.C. 470, *et seq.*) for all Federal actions taken with respect to operation of the five major Federal storage reservoirs mentioned above. Terms of the Agreement may include provisions for further identification and evaluation of potentially affected cultural resources.

The Programmatic Agreement also is being designed to ensure consistency with the American Indian Religious Freedom Act (42 U.S.C. 1996). It provides for BPA participation in the relocation of Native American burials when such sites are discovered through the resource survey and evaluation that will occur as part of the Agreement.

Issued in Portland, Oregon, on May 21, 1991.

Edward W. Sienkiewicz,

*Senior Assistant Administrator.*

[FR Doc. 91–18297 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

## Agency Information Collections Under Review

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents

**DATES:** Comments must be filed on or before September 3, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below).

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Assistant Secretary for Fossil Energy.
2. FE–781R.
3. 1901–0296.
4. Annual Report of International Electrical Export/Import Data.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for profit.
9. 36 respondents.
10. 1 response.
11. 10 hours per response.
12. 360 hours.
13. FE–781R collects electrical import/export data from entities authorized to export electric energy, to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are also used by EIA for publications. Holders of Presidential Permits are required to report.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 25, 1991.

Yvonne M. Bishop,

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 91–18160 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket Nos. QF91-138-000, et al.]

## Hadson Power Partners of Rensselaer, et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

### 1. Hadson Power Partners of Rensselaer

[Docket No. QF91-138-000]

July 22, 1991.

On July 17, 1991, Hadson Power Partners of Rensselaer tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the ownership organizational structure of the facility and the uses of steam provided to BASF Corporation.

*Comment date:* August 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 2. Arkansas Power & Light Company

[Docket No. ER91-548-000]

July 23, 1991.

Take notice that Arkansas Power & Light Company (AP&L) filed on July 22, 1991, proposed Agreements for Wholesale Power Service ("Agreements") between AP&L and the City of Benton, Arkansas, the city of Prescott, Arkansas and Farmers Electric Cooperative Corporation ("Customers"). The proposed Agreements supersede and replace existing Agreement for the Customers' power requirements. The proposed Agreements reduce the rates that would have become effective under the existing Agreements and extend the term for service until December 31, 2000.

The proposed Agreements will effect a savings for the Customers.

*Comment date:* August 8, 1991 in accordance with Standard Paragraph E at the end of this notice.

### 3. Interstate Power Company

[Docket No. ES91-43-000]

July 23, 1991.

Take notice that on July 18, 1991, Interstate Power Company filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $50 million of fixed rate debt and for exemption from the Commission's competitive bidding requirements.

*Comment date:* August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 4. Montaup Electric Company

[Docket No. ER91-301-000]

July 23, 1991.

Take notice that on June 26, 1991, Montaup Electric Company (Montaup) tendered for filing an amendment in the above-reference docket in response to staff's May 1, 1991 letter requesting additional information.

*Comment date:* August 5, 1991, in accordance with Standard Paragraph E end of this notice.

### 5. Philadelphia Electric Company Pennsylvania Power & Light Company

[Docket No. ER91-544-000]

July 23, 1991.

Take notice that on July 17, 1991, Philadelphia Electric Company (PE) on behalf of itself and Pennsylvania Power & Light Company (PL) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and PL dated July 8, 1991.

PE states that the Agreement sets forth the terms and conditions for the sale of import capability which each party expects to have available for sale from time to time and the purchase of which will be economically advantageous to the other party. The rates for these services are negotiated but will not exceed $5.50 per MWH. In order to optimize the economic advantages to both PE and PL, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on July 22, 1991.

PE states that a copy of this filing has been sent to PL and will be furnished to the Pennsylvania Public Utility Commission.

*Comment date:* August 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 6. Michigan Power Company

[Docket No. ER90-297-001]

July 23, 1991.

Take notice that on July 17, 1991, Michigan Power Company (Michigan Power) tendered for filing proposed changes to its tariff MRS for service to the City of Dowagiac, Michigan (Dowagiac) and the Village of Paw Paw, Michigan (Paw Paw).

The purpose of the rate filing is to pass through to Michigan Power's wholesale customers, in accordance with a settlement agreement approved by the Commission in this Docket on November 2, 1990, a decrease in the cost of power purchased by Michigan Power from its wholesale supplier, Indiana Michigan Power Company, resulting from a final order in Docket No. ER90-269-000. Michigan Power requests an effective date of October 21, 1990.

A copy of Michigan Power's filing was served upon Dowagiac, Paw Paw and the Michigan Public Service Commission.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 7. Allegheny Electric Cooperative, Inc. v. Niagara Mohawk Power Corporation

[Docket No. EL91-44-000]

July 23, 1991.

Take notice that on July 2, 1991, Allegheny Electric Cooperative, Inc. (Allegheny) tendered for filing a complaint and request for establishment of refund effective date against Niagara Mohawk Power Corporation (NiMo). Allegheny states that its complaint relates to transmission service rendered by NiMo pursuant to NiMo's Rate Schedule No. 138. Allegheny asserts that the rates currently charged by NiMo under Rate Schedule No. 138 are excessive and unduly discriminatory.

*Comment date:* August 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 8. Niagara Mohawk Power Corporation

[Docket No. ER91-546-000]

July 23, 1991.

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on July 18, 1991, tendered for filing an agreement between Niagara Mohawk and Rochester Gas and Electric Corporation ("RGE") dated May 28, 1991, providing for certain transmission services to RGE. This agreement, Rate Schedule No. supersedes Niagara Mohawk FERC Rate Schedule Nos. 76, 92, 114 and 120.

The May 28, 1991 agreement, provides for the addition of the new service of the transmission and delivery to RGE of energy generated at the Nine Mile Point Unit #2 plant ("Nine Mile #2") and for a change in the rate charged RGE for the transmission and delivery to RGE of certain power and energy generated at the Nine Mile #2 plant and at the New York Power Authority's ("NYPA") Fitzpatrick plant and from NYPA's Blenheim-Gilboa Project and from RGE's share of Oswego Unit #6 and for the delivery of diversity power and energy from NYPA. RGE has consented to these changes.

Effective dates of August 1, 1987 (for the commencement of transmission and delivery of Nine Mile #2 energy) and April 1, 987 (for the change in rates) are proposed. Niagara Mohawk states that

waiver of the notice requirements of 18 CFR 35.3 is warranted because RGE, the only customer under this Rate Schedule, has requested the additional service and has consented to the effective dates.

Copies of this filing were served upon RGE and the New York State Public Service Commission.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

**9. Public Service Company of Oklahoma**

[Docket No. ER91-454-000]

July 23, 1991.

Take notice that on July 17, 1991, Public Service Company of Oklahoma ("PSO") tendered for filing a Contract for Electric Service, dated January 21, 1991, between PSO and South Coffeyville Public Works Authority ("Authority"). The Contract will supersede the present full-requirements wholesale service contract between PSO and Authority. The Contract provides for a five-year term and thereby qualifies Authority for PSO's lowest rates for full-requirements service.

PSO seeks an effective date of January 21, 1991 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were upon Authority and the Oklahoma Corporation Commission.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

**10. PacifiCorp Electric Corporation**

[Docket No. ER91-494-000]

July 23, 1991.

Take notice that on July 19, 1991, Pacific Electric Operations ("PacifiCorp"), tendered for filing an amendment to its filing for Supplement No. 2 dated April 18, 1990 to the May 17, 1962 Contract for Interconnections and Transmission Service, Contract No. 14-06-400-2436, as amended, between Western Area Power Administration ("Western") and PacifiCorp and currently before the Commission under FERC Docket No. ER91-494-000.

Copies of this filing amendment have been supplied to Western, the Public Utility Commission of Oregon and the Utah Public Service Commission.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

**11. Central Illinois Public Service Company**

[Docket No. ER91-547-000]

July 23, 1991.

Take notice that on July 9, 1991, Central Illinois Public Service Company (CIPS) tendered for filing a "Supplemental Agreement for the Purchase of Power by Norris Electric Cooperative from Central Illinois Public Service Company," dated July 10, 1991, and Seventh Revised Schedule A, Points of Delivery, to the underlying supply agreement between CIPS and Norris Electric Cooperative ("Norris"). CIPS provides Norris full-requirements service under a long-standing supply agreement. The Supplemental Agreement provides for an additional delivery point for Norris to contract for unused capacity at the CIPS distribution substation serving the Robinson Correctional Center.

CIPS requests an effective date of July 10, 1991, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Norris and the Illinois Commerce Commission.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

**12. Arkansas Power & Light Company**

[Docket No. ER91-331-000

July 23, 1991.

Take notice that on July 16, 1991, Arkansas Power & Light Company (AP&L) tendered for filing an Amendment to the Agreement for Wholesale Power Service between Arkansas Power & Light Company and Union Electric Company. The Amendment corrects a technical error contained in the formula rates in the original filing. All aspects of the Agreement remain unchanged.

*Comment date:* August 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. 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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D.Cashell,**

*Secretary.*

[FR Doc. 91-18203 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP91-2535-000, et al.]**

## Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

July 25, 1991.

Take notice that the following filings have been made with the Commission:

**1. Florida Gas Transmission Co.**

[Docket No. CP91-2535-000]

Take notice that on July 19, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-2535-000 a request pursuant to §§ 157.205, 157.211 and 157.223 of the Commission's Regulations for authorization to: (1) To transport natural gas on behalf of Hardee Power Partners Limited (HPP) under tow rate Schedule ITS-1 service agreements pursuant to FGT's part 284 blanket certificate issued in Docket No. CP89-555-000, and (2) construct and operate a new meter station and appurtenant facilities to deliver gas pursuant to FGT's blanket authority granted in Docket No. CP82-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that the proposed delivery point to be located in Polk County, Florida, would accommodate the deliveries of 54,000 MMBtu on a peak day to HPP, 45,0000 MMBtu on an average day and 16,425,000 MMBtu annually. It is also stated that HPP would reimburse FGT for all costs of these facilities, estimated to be $726,500.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

**2. Air Products and Chemicals, Inc.**

[Docket No. CP91-2527-000]

Take notice that on July 18, 1991, Air Products and Chemicals, Inc. (Air Products), 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195, filed in Docket No. CP91-2527-000 pursuant to § 385.207 of the Commission's Rules of Practice and Procedure a petition for declaratory order disclaiming jurisdiction over certain proposed refrigerated liquid methane (RLM) that would be used to process natural gas into fuel for railroad locomotives, all as

more fully set forth in the petition which is on file with the Commission and open to public inspection.

Air Products states that, together with the Burlington Northern Railroad, Air Products has undertaken the development of technology whereby natural gas would be liquefied, the RLM would be stored, and then injected into tender cars for use as locomotive fuel. Air Products states that it expects to build, own and operate six to eight RLM plants to provide fuel for long-haul trains that carry coal eastward from Wyoming and Montana. It is indicated that the average plant would liquefy approximately 20,000 Mcf of natural gas per day and have a storage capability of one to three days' production. It is stated that the gas would be delivered to the facilities by interstate pipelines or local distribution companies. Air Products states that it expects to begin construction of the liquefaction plants in 1992.

*Comment date:* August 12, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**3. Arkla Energy Resources, a division of Arkla, Inc.**

[Docket No. CP91-2548-000]

Take notice that on July 22, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP91-2548-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps and related facilities in Oklahoma, under Arkla's blanket certificate issued in Docket No. CP82-384-000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla requests authorization to construct and operate three sales taps for delivery of natural gas to Arkansas Louisiana Gas Company, also a division of Arkla, Inc., for resale to three residential customers in Grady, Seminole and Custer Counties, Oklahoma. Arkla states that the additional taps would have no significant impact on its peak day and annual deliveries.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

**4. Williams Natural Gas Co.**

[Docket No. CP91-2523-000]

Take notice that on July 18, 1991, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma, 74101, filed in Docket No. CP91-2523 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authority to abandon its Rate Schedule IRG, a sales service rate schedule, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

WNG states that the requested authorization is appropriate because Southern Union Gas Company, Peoples Natural Gas Company and Consolidated Utilities Company, the only customers under Rate Schedule IRG, have terminated their service agreements and no longer require service under that rate schedule. It is explained that these customers have executed new sales service agreements with WNG and that future gas sales to them will be made under WNG's new sales Rate Schedule PR(A).

*Comment date:* August 15, 1991, in accordance with Standard Paragraph F at the end of this notice.

**5. Williston Basin Pipeline Co.; Sea Robin Pipeline Co., et al.**

[Docket Nos. CP91-2477-000,[1] CP91-2478-000, CP91-2479-000, CP91-2481-000.]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notices requests are not consolidated.

| Docket No. (Date filed) | Applicant | Shipper name | Peak Day,[1] avg, annual | Points of [2] | | Start up date, rate schedule | Related [3] dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-2477-000 (7-15-91) | Williston Basin Interstate Pipeline Company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501. | Rainbow Gas company. | | 0<br>0<br>0 | | ND, MT, WY, SD | 04-04-91, IT-[illegible] |
| CP91-2478-000 (7-15-91) | Williston Basin Interstate Pipeline Company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501. | North Canadian Resources. | | 0<br>0<br>0 | | ND, MT, WY, SD | 03-27-91, IT-1 |

| Docket No. (Date filed) | Applicant | Shipper name | Peak Day,[1] avg, annual | Points of [2] | | Start up date, rate schedule | Related [3] dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-2479-000 (7-15-91) | Sea Robin Pipeline Company, P.O. Box 2563, Birmingham, Alabama. | Amerada Hess Corporation. | 10,000<br>10,000<br>3,650,000 | OLA | LA | 06-01-91, ITS | ST91-9456-000, CP88-824-000. |

[1] No quantities are shown for Williston since the requests are for additional delivery points only. Quantities are shown in Mcf for Sea Robin.
[2] Offshore Louisiana is shown as OLA.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

| Docket No. (date filed) | Applicant | Shipper name | Peak day,[4] avg, annual | Points of [5] | | Start up date, rate schedule | Related [6] dockets |
|---|---|---|---|---|---|---|---|
| | | | | receipt | delivery | | |
| CP91-2481-000 (7-15-91) | Sea Robin Pipeline Company, P.O. Box 2563, Birmingham, Alabama 35202-2563. | Citrus Marketing, Inc.. | 60,000<br>60,000<br>21,900,000 | OLA | LA | 05-28-91, ITS | ST91-9455-000, RP88-824-000. |

[4] No quantities are shown for Williston since the requests are for additional delivery points only. Quantities are shown in Mcf for Sea Robin.
[5] Offshore Louisiana is shown as OLA.
[6] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**6. Transcontinental Gas Pipe Line Corp.**

[Docket Nos. CP91-2529-000 [2] et al]

Take notice that on July 19, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

| Docket No. (date filed). | Applicant | Shipper name | Peak day,[1] avg. annual | Points of [2] | | Start up date rate schedule | Related [3] dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-2529-000 (7-19-91) | Transcontinental Gas Pipe Line Corporation P.O. Box 1396 Houston, TX 77251. | Texas-Ohio Gas, Inc. | 30,000Dt<br>30,000Dt<br>10,950,000Dt | LA, MD, MS, NJ, PA, OLA, OTX. | NJ, PA | 6-1-91, IT | CP88-328-000, ST91-9200-000. |
| CP91-2530-000 (7-19-91) | Transcontinental Gas Pipe Line Corporation. | Energy Marketing Exchange, Inc. | 150,000Dt<br>50,000Dt<br>18,250,000Dt | LA, MS, NJ, PA, TX, OLA, OTX. | NY | 6-4-91, IT | CP88-328-000, ST91-9343-000. |
| CP91-2531-000 (7-19-91) | Transcontinental Gas Pipe Line Corporation. | Power Authority of the State of New York. | 400,000Dt<br>200,000Dt<br>73,000,000Dt | LA, MS, PA, TX, OLA, OTX. | NY | 6-7-91, IT | CP88-328-000, ST91-9201-000. |
| CP91-2532-000 (7-19-91) | United Gas Pipe Line Company P.O. Box 1478 Houston, TX 77251-1478. | Texas School Land Board. | 1,030<br>1,030<br>375,950 | TX | TX | 6-26-91, ITS | CP88-6-000, ST91-9465-000. |
| CP91-2533-000 (7-19-91) | United Gas Pipe Line Company. | Pennzoil Gas Marketing Company. | 206,000<br>206,000<br>24,720,000 | LA, MS, TX, OLA, OTX. | AL, FL, LA, MS, TX, OLA. | 6-19-91, ITS | CP88-6-000, ST91-9385-000. |

[1] Quantities are shown in MMBtu unless otherwise noted.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**7. Northern Natural Gas Co., Natural Gas Pipeline Co. of America et al.**

[Docket No. CP91-2543-000, CP91-2544-000, CP91-2545-000]

Take notice that on July 22, 1991, Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§-157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-435-000 and Docket No. CP86-582-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt [1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2543-000 (7-22-91) | Centran Corporation (Marketer). | 50,000<br>37,500<br>18,250,000 | Various | Various | 6-28-91, IT-1, Interruptible. | ST91-9538-000, 6-25-91. |
| CP91-2544-000 (7-22-91) | CNG Producing Company (Producer). | 2,000<br>1,500<br>547,500 | OLA | OLA | 5-13-91, ITS, Interruptible. | ST91-9003-000, 5-17-91. |
| CP91-2545-000 (7-22-91) | CNG Producing Company (Producer). | 20,000<br>10,000<br>3,650,000 | OLA | OLA | 11-7-90, ITS Interruptible. | ST91-9004-000, 5-17-91. |

[1] Offshore Louisiana is shown as OLA.

**8. Northwest Pipeline Corp., Panhandle Eastern Pipe Line Co., Tennessee Gas Pipeline Co., Williston Basin Interstate Pipeline Co., Mississippi River Transmission Corp.**

[Docket Nos. CP91-2549-000, CP91-2558-000, CP91-2559-000, CP91-2560-000, CP91-2561-000, CP91-2563-000, CP91-2564-000.]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicant's addresses and transportation blanket certificates are shown in the attached appendix B.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of the notice.

[4] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2549-000 (7-22-91) | John Brown E&C Inc. (End-user). | 8,000<br>3,300<br>[1] 1,205,000 | CO | CO | 6-1-91, TI-1, Interruptible. | ST91-9575-000. |
| CP91-2558-000 (7-23-91) | Amgas, Inc. (Marketer) | 20<br>10<br>3,650 | Various | IL | 5-22-91, PT, Interruptible. | ST91-9093-000. |
| CP91-2559-000 (7-22-91) | Meridian Oil Inc. (Producer). | 250,000<br>250,000<br>91,250,000 | AL | Various | 6-8-91, IT, Interruptible. | ST91-9376-000. |
| CP91-2560-000 (7-23-91) | North Canadian Resources, Inc. | 106,382<br>0<br>38,829,430 | ND, MT, WY, SD | ND, MT, WY, SD | 6-10-91, IT-1, Interruptible. | ST91-9482-000. |
| CP91-2561-000 (7-23-91) | Prairielands Energy Marketing, Inc. (Marketer). | 7,004<br>7,004<br>2,556,460 | ND, MT, WY | ND, MT, WY, SD | 6-4-91, IT-1, Interruptible. | ST91-9483-000. |
| CP91-2563-000 (7-23-91) | Excel Gas Marketing, Inc. | 50,000<br>50,000<br>[2] 18,500,000 | AR, LA, TX, IL, OK | LA | 6-1-91, ITS, Interruptible. | ST91-9366-000. |

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2564-000 (7-23-91) | Shell Oil Company | 10,000<br>10,000<br>3,650,000 | AR, LA, TX, IL, OK | IL | 6-1-91, FTS, Firm | ST91-9364-000. |

[1] Northwest's quantities are in MMBtu.
[2] MRT's quantities are in MMBtu.

| Applicant's address | Blanket docket |
|---|---|
| Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124. | CP89-1121-000 |
| Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108. | CP86-578-000 |
| Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642. | CP86-585-000 |
| Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252. | CP87-115-000 |
| Williston Basin Interstate Pipeline company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501. | CP89-1118-000 |

| Upstream pipline | Rate schedule | Capacity |
|---|---|---|
| ANR | X-11 | 183,000 Mcf/d |
| ANR | X-63 | 196,640 Mcf/d |
| ANR | X-153 | 75,000 Mcf/d |
| HIOS | T-3 | 182,500 Mcf/d |
| HIOS | T-17 | 8,000 Mcf/d |
| Texas Eastern | FT | 80,000 Mcf/d |

**9. Texas Gas Transmission Corp.**

[Docket No. CP88-686-004].

Take notice that on July 22, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-686-004 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order of September 15, 1988, 44 FERC 62,265, issuing to Texas Gas a blanket certificate of public convenience and necessity for certain transportation of natural gas pursuant to order Nos. 436 and 500. Texas Gas states that the amendment requested herein would authorize the use of certain firm capacity rights on upstream pipelines to render firm and interruptible transportation on behalf of third parties when such capacity is not required by Texas Gas for its system supply and the refunctionalization of certain offshore gathering facilities to transmission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

On July 22, 1991, Texas Gas filed an "Offer of Settlement" in docket Nos. RP90-104-000, et al., RP88-115-000, et al., RP90-192-000, et al. and CP88-686-004. Texas Gas proposes in Article IX of the "Offer of Settlement" to use the firm transportation rights set forth below to render firm and interruptible transportation on behalf of third parties when such capacity is not required by Texas Gas for its system supply.

Texas Gas states that such capacity shall be allocated in accordance with section 10.2 of the General Terms and Conditions of Volume 2-A of Texas Gas' FERC Gas Tariff (such capacity will not be available under firm point-to-point transportation agreements). Texas Gas states that customers shall pay the applicable Texas Gas FT or IT transportation rate.

Texas Gas requests in article VIII of the "Offer of Settlement" authority to refunctionalize certain offshore gathering facilities with a remaining original cost of $1,338,643 to the offshore transmission function under its blanket certificate issued in Docket No. CP82-407-000 pursuant to Section 157.208(a) of the Commission's Regulations, and to operate the refunctionalized facilities.

*Comment date:* August 12, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**10. Texas Gas Transmission Corp.**

[Docket No. CP91-2546-000]

Take notice that on July 22, 1991, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42309, filed in Docket No CP91-2546-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Peoples Gas and Power, Inc. (Peoples) in Greene County, Indiana, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes natural gas sales to Peoples pursuant to a service agreement dated November 1, 1990. Texas Gas states further that the proposed new delivery point would enable Peoples to render natural gas service to approximately 300 new residential customers and one (1) new commercial customer located along Indiana State Road No. 54.

It is said that the annual maximum quantity of natural gas to be delivered to the proposed new delivery point would be an estimated 37,000 MMBtu, with an estimated maximum daily delivery of 450 MMBtu. It is further said that the addition of the new delivery point would not result in an increase in Peoples' current daily contract demand.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

**11. Texas Gas Transmission Corp.**

[Docket No. CP91-2547-000]

Take notice that on July 22, 1991, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42309, filed in Docket No. CP91-2547-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Western Kentucky Gas Company (WKG) in Hopkins County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes natural gas sales to WKG pursuant to a service agreement dated August 1, 1990. Texas Gas states further that the proposed new delivery point would enable WKG to render natural gas service to four (4) new residential customers in the Otter Lake Loop residential area.

It is said that the annual maximum quantity of natural gas to be delivered to the proposed new delivery point would be an estimated 520 MMBtu, with an estimated maximum daily delivery of 4 MMBtu. It is further said that the addition of the new delivery point would not result in an increase in WKG's current daily contract demand.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

**12. Tennessee Gas Pipeline Co.**

[Docket No. CP91-2451-000]

Take notice that on July 23, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. box 2511, Houston, Texas 77252, filed in Docket No. CP91-2451-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Chevron U.S.A., Inc., a producer, under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that, pursuant to an agreement dated September 22, 1988, under its Rate Schedule IT, it proposes to transport up to 7,000 Dt per day equivalent of natural gas. Tennessee indicates that it would transport 7,000 Dt on an average day and 2,555,000 Dt annually. Tennessee further indicates that the gas would be transported from Offshore Louisiana, and would be redelivered in Louisiana.

Tennessee advises that service under § 284.223(a) commenced January 1, 1990, as reported in Docket No. ST91-9378.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol 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 385.211 and 385.214) 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-18201 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CI91-76-000, et al.]**

## Hunt Petroleum Corp., et al. Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. Hunt Petroleum Corp.**

[Docket No. CI91-76-000]

July 22, 1991.

Take notice that on April 24, 1991, Hunt Petroleum Corporation (Hunt) of 3400 Thanksgiving Tower, Dallas, Texas 75201, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate to authorize jurisdictional sales of gas under contracts to which Hunt is or becomes a successor-in-interest prior to the effective date of total decontrol under the Natural Gas Wellhead Decontrol Act of 1989, all as more fully set forth in the application which is on file with the Commission and open for public inspection. Hunt also requests that the Commission waive its regulations regarding the establishment of rate schedules.

*Comment date*: August 8, 1991, in accordance with Standard Paragraph J at the end of this notice.

**2. El Paso Production Co.**

[Docket No. CI91-50-000]

July 22, 1991.

Take notice that on January 22, 1991, El Paso Production Company (El Paso Production) of 2919 Allen Parkway, suite 900, Houston, Texas 77019, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate authorizing the continuation of sales in interstate commerce from numerous properties which it has acquired from various producers or from properties which it may acquire prior to January 1, 1993, the effective date of decontrol under the Natural Gas Wellhead Decontrol Act of 1989, all as more fully set forth in the application which is on file with the commission and open for public inspection. El Paso Production also requests that the Commission waive its regulations concerning the establishment of rate schedules.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph J at the end of this notice.

**3. D M Royalties, Ltd., et al.**

[Docket Nos. CS91-9-000,[1] et al.

July 22, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale of resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

*Comment date*: August 8, 1991, in accordance with Standard paragraph J at the end of the notice.

| Docket No. | Date filed | Applicant |
|---|---|---|
| CS91-9-000..... | 6-12-91 | D M Royalties, Ltd., P.O. Box 1716, Fort Worth, TX 76101. |

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. | Date filed | Applicant |
|---|---|---|
| CS91-10-000.... | 7-15-91 | Zinke & Trumbo, Ltd., 1202 East 33rd Street, Tulsa, OK 74105. |

**4. Ruth Ray Hunt d/b/a Mrs. H. L. Hunt, Loyal Trusts #1-4, Unit Four Partnership, Lyda Hunt-Margaret Trust, Margaret Hunt Hill, Caroline Hunt Schoellkopf, N. B. Hunt, W. H. Hunt, Lamar Hunt, H. L. Hunt, Jr. Trust Estate, Reliance Trusts, and Hunt Oil Co.**

[Docket No. CI91-43-000]

July 22, 1991.

Take notice that on January 22, 1991, as supplemented on February 19, 1991, Ruth Ray Hunt d/b/a Mrs. H. L. Hunt et al. (Applicants), c/o Hunt Oil Company, 1445 Ross Avenue, Dallas, Texas 75202-2785, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of any "committed or dedicated" natural gas produced from acreage that Applicants have acquired from the Estate of H. L. Hunt, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants state that they are the heirs and devisees of H. L. Hunt who died on November 29, 1974. The certificates held by H. L. Hunt were amended to reflect the Estate of H. L. Hunt as the certificate holder by Commission order issued April 30, 1975, in Docket No. G-4866, et al. Applicants state that assignments were made out of the Estate of H. L. Hunt to Mrs. Hunt on January 1, 1983 and to the other various successors in 1985. Applicants are seeking blanket certificate authorization with pregranted abandonment to continue sales which have been or may be made to various purchasers from the acquired acreage.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph J at the end of this notice.

**5. ANR Pipeline Co.**

Docket No. CP91-2507-000, CP91-2508-000, CP91-2509-000, CP91-2510-000, CP91-2511-000]

July 22, 1991.

Take notice that on July 17, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by ANR and is summarized in the attached appendix.

*Comment date:* September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt points | Delivery points | Contract date, date schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2507-000 (7-17-91) | Texpar Energy, Inc. (Marketer). | 100,000<br>100,000<br>36,500,000 | LA, OK, KS, TX, IL, IN, MI, WI, OH, KY Off LA, Off TX. | MI, WI | 3-15-91, ITS, Interruptible. | ST91-9203-000, 6-1-91. |
| CP91-2508-000 (7-17-91) | Phillips 66 Natural Gas Company (Marketer). | 100,000<br>100,000<br>36,500,000 | TX | MI, WI, IA, IL, IN, OH, KS. | 3-13-91, ITS, Interruptible. | ST91-9204-000, 6-1-91. |
| CP91-2509-000 (7-17-91) | Rangeline Corporation (Marketer). | 50,000<br>50,000<br>18,250,000 | LA, OK, KS, TX, MI, WI Off LA, Off TX. | KS, MO, IA, IL, TX, OK | 2-12-91, ITS, Interruptible. | ST91-9205-000, 6-1-91. |
| CP91-2510-000 (7-17-91) | Semco Energy Services Inc. (Marketer). | 30,000<br>30,000<br>10,950,000 | LA, OK, KS, TX, MI, Off LA, Off TX. | MI | 8-31-90, ITS, Interruptible. | ST91-9324-000, 6-1-91. |
| CP91-2511-000 (7-17-91) | Entrade Corporation (Marketer). | 100,000<br>100,000<br>36,500,000 | LA, TX, OK, KS, MI, WI, Off LA, Off TX. | MI | 6-5-90, ITS, Interruptible. | ST91-9468-000, 6-1-91. |

**6. Texas Gas Transmission Corp.; Natural Gas Pipeline Co. of America**

[Docket Nos. CP91-2525-000, CP91-2526-000, CP91-2528]

July 22, 1991.

Take notice that on July 19, 1991, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, and Natural Gas Pipeline Company of America, 710 East 22nd Street, Lombard, Illinois 60148, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-686-000 and Docket No. CP86-582-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2525-000 (7-19-91) | O&R Energy, Inc | 40,000<br>30,000<br>5,475,000 | Various | OH | 7-20-90, IT, Interruptible. | ST91-9399-000, 6-27-91. |
| CP91-2526-000 (7-19-91) | BASF Corporation | 10,000<br>4,384<br>1,600,000 | Various | OH | 7-31-90, IT, Interruptible. | ST91-9401-000, 7-1-91. |
| CP91-2528-000 (7-19-91) | O&R Energy, Inc. (Marketer). | 50,000<br>20,000<br>7,300,000 | Various [1] | Various | 3-27-91, ITS, Interruptible. | ST91-9063-000, 5-20-91. |

[1] All Receipt Points as they appear in Natural's most recently revised and currently released edition of Catalog of Receipt and Delivery Points, as such may be changed from time to time.

**7. Stingray Pipeline Co.; Transcontinental Gas Pipe Line Corp., ANR Pipeline Co. Midwestern Gas Transmission Co.**

[Docket Nos. CP91-2512-000, CP91-2513-000, CP91-2514-000, CP91-2515-000, CP91-2517-000]

July 22, 1991.

Take notice that on July 18, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

*Comment date*: September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day Average day, annual dth | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2512-000 (7-18-91) | CNG Producing Company (producer). | 50,000<br>25,000<br>[1] 9,125,000 | Offshore, TX, LA | Offshore, TX, LA | 11-19-90, ITS, Interruptible. | ST91-8986-000 5-10-91 |
| CP91-2513-000 (7-18-91) | Laser Marketing Company (marketer). | 4,000<br>2,500<br>[2] 912,500 | Offshore, LA, TX | LA | 4-24-90, ITS, Interruptible. | ST91-9000-000 5-3-91 |
| CP91-2514-000 (7-18-91) | Mid Con Marketing Corp. (marketer). | 3,400,000<br>50,000<br>18,250,000 | Offshore, TX, LA, MS | NJ, DE, NY, MS, PA, VA, LA, TX. | 8-10-90, IT, Interruptible. | ST91-9202-000 5-29-91 |
| CP91-2515-000 (7-18-91) | Texpar Energy, Inc. Corp. (marketer). | 50,000<br>50,000<br>18,250,000 | Offshore, LA, TX, OK, KS. | WI | 1-5-90, ITS, Interruptible. | ST91-9320-000 6-1-91 |
| CP91-2517-000 (7-18-91) | Hougex Gas Marketing Company (marketer). | 100,000<br>100,000<br>36,500,000 | TN, IN, IL, KY | TN, IL, IN, KY | 6-17-90, IT, Interruptible. | ST91-9525-000 7-1-91 |

[1] Stingray's quantities are in MMBtu.
[2] Stingray's quantities are in MMBtu.

| Applicant's address | Blanket docket |
|---|---|
| Stingray Pipeline Company, 701 East 22nd Street, Lombard, Illinois 60148. | RP89-70-000 [1] |
| ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243. | CP88-532-000 |
| Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252. | CP90-174-000 |
| Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251. | CP88-328-000 |

[1] Order No. 509 issued Stingray a blanket transportation certificate corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000.

**8. Colorado Interstate Gas Co.; ANR Pipeline Co.**

[Docket Nos. CP91-2536-000, CP91-2537-000]

July 23, 1991

Take notice that on July 19, 1991, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, and ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of

shippers under the blanket certificates issued in Docket No. CP86–589, et al., and Docket No. CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* September 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt [1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91–2536–000 (7–19–91) | Golden Gas Energies, Inc. (intrastate pipeline). | 5,000<br>5,000<br>[2] 1,800,000 | TX, OK, KS, CO, WY, UT. | CO | 4–22–91, TI–1, Interruptive | ST91–8879–000 5–17–91 |
| CP91–2537–000 (7–19–91) | Mobil Natural Gas, Inc. (marketer). | 100,000<br>100,000<br>36,500,000 | OLA, LA | LA | 8–21–90, ITS, Interruptible. | ST91–9321–000 6–1–91 |

[1] Offshore Louisiana is shown as OLA.
[2] CIG's quantities are in Mcf.

**9. Trunkline Gas Co.**

[Docket No. CP91–2539–000, CP91–2540–000, CP91–2541–000, CP91–2542–000]

July 23, 1991.

Take notice that on July 22, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

*Comment date:* September 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Mcf | Receipt [1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91–2539–000 (7–22–91) | Louis Dreyfus Energy Corporation (producer). | 50,000<br>50,000<br>18,250,000 | OLA, OTX, IL, LA, TN, TX. | LA | 10–2–90, PT, Interruptible. | ST91–9430–000 5–1–91 |
| CP91–2540–000 (7–22–91) | Enserch Gas Company (marketer). | 50,000<br>50,000<br>18,250,000 | OLA, OTX, IL, LA, TN, TX. | IL | 12–21–90, PT, Interruptible. | ST91–9479–000 1–1–91 |
| CP91–2541–000 (7–22–91) | Enserch Gas Company (marketer). | 100,000<br>100,000<br>36,500,000 | OLA, OTX, IL, LA, TN, TX, IN. | OH | 1–24–91, PT, Interruptible. | ST91–9478–000 2–1–91 |
| CP91–2542–000 (7–22–91) | Meridian Oil Trading, Inc. (marketer). | 100,000<br>100,000<br>36,500,000 | OLA, OTX, IL, LA, TN, TX. | IN | 4–18–91, PT, Interruptible. | ST91–9480–000 5–1–91 |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**10. Union Oil Co. of California, et al.**

[Docket Nos. CI66–738–002,[7] et al.]

July 23, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

[7] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| CI66–738–002 D 6–24–91 | Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051. | Northern Natural Gas Company, Denison Field, Sutton County, Texas. | Acreage assigned 6–1–91 to CLTC Exchange Company which assigned it to Centerpoint Resources, Inc. effective 6–1–91. |

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| CI91-89-000 (CI65-472) (CI66-1003) D 6-26-91 | Meridian Oil Production Inc., P.O. Box 4239, Houston, Texas 77210. | ANR Pipeline Company, Laverne Field, Harper County, Oklahoma. | Acreage assigned 1-1-91 to Alan R. Staab. |

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

**11. Texaco Exploration and Production Inc. (Successor-in-Interest to Texaco Inc.)**

[Docket No. G-4616-004, et al]

July 23, 1991.

Take notice that on April 23, 1991, as supplemented on May 6, 1991, Texaco Exploration and Production Inc. (Applicant) of P.O. Box 4700, Houston, Texas 77210-4700, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Texaco Inc. (Texaco) for certificates authorizing Applicant to continue the sales previously made by Texaco under the certificates listed in appendices A and B and requesting that the related rate schedules listed in appendix A be redesignated as those of Applicant. Applicant also requests that Texaco Inc. and Texaco Producing Inc.'s rate schedules listed in appendix B be consolidated and that the consolidated rate schedules be redesignated as those of Applicant, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By assignment executed and effective January 1, 1991, Texaco assigned the properties covered under the certificates and rate schedules listed in appendices A and B to Applicant. Applicant is now seeking authorization to continue sales from the acquired interests.

*Comment date:* August 8, 1991, in accordance with Standard Paragraph J at the end of the notice.

APPENDIX A

| Certificate docket no. | Texaco Inc. FERC gas rate schedule No. | Purchaser |
|---|---|---|
| G-4616 | 39 | Phillips Petroleum Company |
| G-4616 | 42 | Phillips Petroleum Company |
| G-4820 | 97 | Texas Eastern Transmission Corporation |
| G-4824 | 98 | K N Energy, Inc. |
| G-11879 | 160 | Texas Eastern Transmission Corporation |
| G-12162 | 163 | Williams Natural Gas Company |
| G-13552 | 170 | Texas Eastern Transmission Corporation |
| G-19127 | 201 | Phillips Petroleum Company |
| CI60-313 | 213 | Phillips Petroleum Company |
| CI60-725 | 219 | Phillips Petroleum Company |
| CI62-519 | 251 | Williams Natural Gas Company |
| CI62-569 | 253 | Ringwood Gathering Company |
| CI62-712 | 255 | Williams Natural Gas Company |
| G-9487 | 272 | Texas Eastern Transmission Corporation |
| CI63-397 | 305 | Lone Star Gas Company |
| CI64-824 | 324 | Sunterra Gas Gathering Company |
| CI64-973 | 326 | K N Energy, Inc. |
| CI64-976 | 327 | K N Energy, Inc. |
| CI68-499 | 406 | Mountain Fuel Supply Company |
| CI69-373 | 421 | Southern California Gas Company |
| G-4616 | 433 | Phillips Petroleum Company |
| CI77-381 | 544 | ANR Pipeline Company |
| CI82-196 | 605 | Pacific Interstate Gas Company |
| CI82-197 | 606 | Pacific Interstate Gas Company |
| CI84-593 | 622 | Amoco Gas Company |

APPENDIX B

| Texaco Inc. Certificate Docket No. and FERC Gas Rate Schedule No. | Texaco Producing Inc. Certificate Docket No. and FERC Gas Rate Schedule No. | Purchaser |
|---|---|---|
| G-4616 13 | CI87-576 625 | KN Energy, Inc. |
| G-12568 166 | CI87-575 626 | K N Energy, Inc. |

**12. Northern Natural Gas Co.**

[Docket No. CP91-2534-000]

July 24, 1991.

Take notice that on July 19, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a request with the Commission in Docket No. CP91-2534-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate sixteen delivery points and add seven existing jurisdictional delivery points to its service agreement with People Natural Gas Company, Division of UtiliCorp United, Inc. (Peoples), under the blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northern proposes to construct and operate sixteen delivery points in order for Peoples to provide natural gas service to communities in Iowa, Minnesota, and Nebraska currently without natural gas service (see

appendix A). Northern states that it would deliver a total of 8,412 Mcf of natural gas on peak days and 897,181 Mcf annually to Peoples at these delivery points. Northern also requests authorization to add seven existing jurisdictional delivery points (see appendix B) to the service agreement with Peoples for sales under its FERC Rate Schedule CD–1. Northern states that it would deliver 2,232 Mcf of natural gas on peak days and 188,653 Mcf annually to Peoples at these existing delivery points. The natural gas volumes Northern proposes to deliver to Peoples at these 23 delivery points would be within Peoples' currently authorized firm entitlements under Rate Schedule CD–1.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX A.—DELIVERY POINTS PROPOSED FOR CONSTRUCTION AND OPERATION

| | |
|---|---|
| 1. | Aurora, Fayette County, Iowa |
| 2. | Brewster, Nobles County, Minnesota |
| 3. | Elmerado Estates, Polk County, Iowa |
| 4. | Fonda, Buena Vista County, Iowa |
| 5. | Fountain, Fillmore County, Minnesota |
| 6. | Freeborn, Freeborn County, Minnesota |
| 7. | Garnavillo, Clayton County, Iowa |
| 8. | Hickman, Lancaster County, Nebraska |
| 9. | Ivanhoe/Canby/Hendricks, Lincoln County, Minnesota [1] |
| 10. | Lake View/Wall Lake, Sac County, Iowa |
| 11. | Lawler, Chickasaw County, Iowa |
| 12. | Lewis, Cass County, Iowa |
| 13. | Peterson, Fillmore County, Minnesota |
| 14. | Sherwood Forest, Chisago County, Minnesota |
| 15. | Springville, Jones County, Iowa |
| 16. | Stanhope, Boone county, Iowa |

[1] Northern Border Pipeline Company will, according to Northern's application, file a prior-notice request within ten days after the Commission has issued its notice in Docket No. CP91–2534–000 for authorization to operate an existing value as a delivery point to Northern at the proposed Ivanhoe delivery point.

APPENDIX B.—EXISTING DELIVERY POINTS NORTHERN PROPOSES TO ADD TO SERVICE AGREEMENT

| | |
|---|---|
| 1. | Altura, Winona County, Minnesota |
| 2. | Baxter, Jasper County, Iowa |
| 3. | Bennett, Otoe County, Nebraska |
| 4. | Garden City, Hardin County, Iowa |
| 5. | Knapp Gardens, Polk County, Iowa |
| 6. | LaMotte and Zwingle, Dubuque County, Iowa |
| 7. | Northrup, Martin County, Minnesota |

APPENDIX B.—EXISTING DELIVERY POINTS NORTHERN PROPOSES TO ADD TO SERVICE AGREEMENT—Continued

| | |
|---|---|
| | |

**13. Great Lakes Gas Transmission Limited Partnership**

[Docket No. CP91–2458–000]

July 24, 1991.

Take notice that on July 12, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed an application pursuant to section 7(b) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b), for authority to abandon firm natural gas transportation service provided to Michigan Consolidated Gas Company (MichCon) and Michigan Gas Company (MiGas) pursuant to Rate Schedules T–15 and T–18, respectively, under Great Lakes' FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection. Great Lakes states that both MichCon and MiGas have requested that their respective services be terminated effective November 1, 1991, and each has requested that a reduced level of this transportation service be provided under an FT Agreement, in accordance with Great Lakes' open access tariff.

Great Lakes states that it currently provides MichCon with firm transportation of up to 57,000 Mcf per day (Mcfd) from an existing interconnection between the facilities of Great Lakes and TransCanada Pipelines, Limited, located on the international boundary near Emerson, Manitoba (Emerson Receipt Point), to various points of interconnection between the facilities of Great Lakes and MichCon, located at Rapid River, Mackinaw, Rudyard, Sault Ste. Marie, Pellston, Petoskey, Gaylord, and Belle River Mills, Michigan, pursuant to a Transportation Service Agreement between the companies, dated December 10, 1987. The service was certificated by the Commission on May 6, 1987, in Docket No. CP86–696–000.

Great Lakes further states that it provides MiGas with firm transportation service of up to 7,300 Mcfd from the Emerson Receipt Point to various points of interconnection between the facilities of Great Lakes and MiGas, located at Manistique, Newberry-Engadine, and St. Ignace, Michigan, pursuant to a Transportation Service Agreement between the companies, dated July 31, 1989. The service was certificated by the Commission on May 23, 1988 in Docket No. CP88–8–000.

Great Lakes states that each of the referenced Agreements provide for a primary term which expires on November 1, 1991. Further, MichCon has advised that it would like to reduce the level of transportation service from the Emerson Receipt Point from 57,000 Mcfd to 30,000 Mcfd upon the expiration date. MiGas has requested a similar reduction from a maximum of 7,300 Mcfd to 1,800 Mcfd. MichCon and MiGas have each requested that their respective reduced levels of service be provided under Great Lakes' FT Rate Schedule. Further, MichCon and MiGas both consent to abandonment of the current service, effective November 1, 1991, and each has entered into a letter agreement, dated July 1, 1991, which reflects this understanding. Great Lakes advises that no facilities are being abandoned in this application. Great Lakes also advises that, as a result of the reduction in service by MichCon and MiGas, up to 32,500 Mcfd of capacity will become available on Great Lakes' system. Great Lakes states that this capacity will allow it to avoid the cost of constructing facilities required to provide firm transportation services for Northern States Power Company (Wisconsin) and Northern States Power Company (Minnesota) and Kamine/Beta South Glen Falls, L.P. According to Great Lakes, this will reduce its planned construction costs by $25,000,000, thus benefiting all of the shippers on Great Lakes' system.

*Comment date:* August 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

**14. Texas Eastern Transmission Corp.; Tennessee Gas Pipeline Co.**

[Docket Nos. CP91–2493–000, CP91–2494–000, CP91–2495–000, CP91–2518–000]

July 24, 1991.

Take notice that Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252–2521, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88–136–000, as amended and Docket No. CP87–115–000, respectively, pursuant to

section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date*: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMbtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2493-000 (7-17-91) | Clinton Gas Transmission, Inc. (Marketer). | 100,000<br>100,000<br>36,500,000 | Various | Various | IT-1, Interruptible | ST91-8839<br>6-2-91 |
| CP91-2494-0000 (7-17-91) | Vesta Energy Company (Marketer). | 120,000<br>120,000<br>43,800,000 | Various | Various | IT-1, Interruptible | ST91-9170<br>6-1-91 |
| CP91-2495-000 (7-17-91) | Yuma Gas Corporation (Marketer). | 40,000<br>40,000<br>14,600,000 | Various | Various | IT-1, Interruptible | ST91-9336<br>6-5-91 |
| CP91-2518-000 (7-18-91) | Hougex Gas Marketing Company (Marketer). | 100,000<br>100,000<br>36,500,000 | Various | IL | IT, Interruptible | ST91-9524<br>7-1-91 |

**15. United Gas Pipe Line Co.**

[Docket No. CP91-2516-000]

July 24, 1991.

Take notice that on July 18, 1991, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-2516-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a six-inch delivery tap and related facilities in order to transport natural gas for Shell Oil Company (Shell) in Ranking County, Mississippi, all as more fully set forth in the request on file with the Commission and open to public inspection.

United, specifically states that the proposed facilities will enable it to transport on an interruptible basis an estimated average of 55,000 Mcf/d of natural gas for Shell under United's ITS Rate Schedule. United also states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. United proposes to install the facilities at M.P. 243.00 on the Koseiusko 30-inch line, in Section 24, T-6-N, R-2-E, at an estimated cost of 231,900, of which cost, Shell will reimburse United.

*Comment date:* September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

**16. Ocean State Power II**

[Docket No. CI91-103-000]

July 24, 1991.

Take notice that on July 3, 1991, as modified on July 16, 1991, Ocean State Power II (Ocean State II), c/o J. Makowski Associates, Inc., One Bowdoin Square, Boston, Massachusetts 02114, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale of natural gas in interstate commerce subject to the Commission's jurisdiction, including imported gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

**17. Honda of America Mfg., Inc.**

[Docket No. CI91-106-000]

July 24, 1991.

Take notice that on July 18, 1991, Honda of America Mfg., Inc. (Honda) of Honda Parkway, Marysville, Ohio 43040, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate which pregranted abandonment authorizing sales in interstate commerce for resale of natural gas from any source (domestic or foreign) to the extent such sales would be subject to the Commission's NGA jurisdiction, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

**18. New Jersey Natural Gas Co.**

[Docket No. CI91-104-000]

July 24, 1991.

Take notice that on July 9, 1991, New Jersey Natural Gas Company (New Jersey Natural), a local distribution company, of 1415 Wyckoff Road, P.O. Box 1464, Wall, New Jersey 07719, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of any natural gas, including all gas purchased in a first sale, imported natural gas, and natural gas purchased from interstate and intrastate pipelines and from local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

**19. Cibola Corp.**

[Docket No. CI91-105-000]

July 24, 1991.

Take notice that on July 10, 1991, Cibola Corporation (Cibola) of 11011 Q Street, #106-A, Omaha, Nebraska 68137, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the

Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales of any natural gas in interstate commerce for resale, including all gas NGPA categories of NGA gas, imported natural gas, and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph J at the end of the Notice.

**20. North Jersey Energy Associates**

[Docket No. CI91-101-000]

July 24, 1991.

Take notice that on July 3, 1991, North Jersey Energy Associates (North Jersey), c/o Intercontinental Energy Corporation, 350 Lincoln, suite 111, Hingham, Massachusetts 02043, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas, natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply and any other natural gas required to be sold pursuant to a certificate, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

**21. Northeast Energy Associates**

[Docket No. CI91-102-000]

July 24, 1991.

Take notice that on July 3, 1991, Northeast Energy Associates (Northeast), c/o Intercontinental Energy Corporation, 350 Lincoln, suite 111, Hingham, Massachusetts 02043, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas, natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply and any other natural gas required to be sold pursuant to a certificate, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

*Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.*

**22. Chevron U.S.A. Inc., et al.**

[Docket No. G-7192-000,[9] et al.]

July 23, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

*Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.*

[9] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| G-7192-000<br>G-10642-000 E 5-1-91 | Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725. | El Paso Natural Gas Company, R.S. Windham Lease, Amacker-Tippett Field, Upton County, Texas. | Acreage acquired 5-1-90 from Lawyers Title Insurance Corporation which acquired it from Union Oil Company of California. |
| CI91-71-000<br>(CI75-734)<br>B<br>4-12-91 | Maxus Exploration Company, 717 N. Harwood Street, suite 3100, Dallas TX 75201-6505. | Natural Gas Pipeline Company of America, Block 23-L, High Island Area, State of Texas waters. | Last well plugged and abandoned, lease expired. |
| CI91-74-000<br>(CI79-658)<br>B<br>4-15-91 | BHP Petroleum Company Inc., 5847 San Felipe, suite 3600, Houston, TX 77057. | Columbia Gas Transmission Corporation, Galveston Area Blocks A-126 and A-131, Offshore Texas. | Reserves depleted, leases expired. |
| CI91-83-000<br>(CI75-468)<br>B<br>5-10-91 | Unocal Exploration Corporation, P.O. Box 7600, Los Angeles, CA 90051. | Texas Eastern Transmission Corporation, West Cameron Block 513, Offshore Louisiana. | Lease expired, wells plugged and abandoned. |
| CI91-84-000<br>(CI81-291)<br>B<br>5-10-91 | Unocal Exploration Corporation | Texas Eastern Transmission Corporation, West Cameron Block 528, Offshore Louisiana. | Well plugged and abandoned, lease expired. |
| CI91-100-000<br>E<br>7-2-01 | Diamond Shamrock Offshore partners Limited Partnership, 717 N. Harwood Street, room 3156, Dallas, TX 75201. | Texas Gas Transmission Corporation, Block 220, East Cameron Area, Offshore Louisiana. | Acreage acquired 1-1-91 from OKC Limited Partnership. |

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Assignment of acreage, E—Succession, F—Partial Succession.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., 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 385.211 and 385.214) 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol 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 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-18202 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

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[RP91-179-000]

## The Algonquin Customer Group v. Texas Eastern Transmission Corporation; Complaint

July 25, 1991.

On July 24, 1991, the Commission issued an Order on Rehearing in CNG Transmission Corporation, Docket Nos. RP88-211-012, *et al.*, which also established the complaint docket in the above-captioned proceeding. The Commission stated that it would treat as a complaint the filing made by the Algonquin Customer Group on June 6, 1991, which requested clarification or, in the alternative, rehearing of the Commission order issued May 7, 1991, in the above-mentioned CNG dockets.

The Commission's July 24, 1991 order stated as follows in treating the Algonquin Customers' filing as a complaint (footnotes deleted):

"The order approving CNG's settlement required CNG to offer all its restructured CD partial requirements customers the same package of restructured sales, storage, and transportation services, with upstream capacity rights and access to favorable upstream receipt points, that CNG has offered to its RQ full requirements sales customers. Under the settlement, RQ and CD customers are allowed to reduce and/or convert current sales entitlements and receive restructured service under new ACD and CD Rate Schedules, respectively. New ACD customers are permitted, under the settlement, to buy gas from sources other than CNG and to store gas purchased from other sources and CNG in CNG's storage fields. After the settlement becomes effective, CNG and its sales customers will commence restructured services under new service agreements based on their interim precedent agreements with CNG."

"Algonquin Gas Transmission Corp., an indirect pipeline CD customer of CNG interconnects with Texas Eastern, not CNG. Texas Eastern's FTS Rate Schedule requires Texas Eastern to transport only gas purchased under CNG's *existing* CD Rate Schedule. Texas Eastern agrees in the FTS Rate Schedule to transport only the gas Algonquin purchases from CNG under the existing CD Rate Schedule until the service agreement expires on October 31, 1992, unless the agreement is extended. Algonquin Customers argue that in order for Algonquin and its LDC resale customers to participate in CNG's restructured services on an equal basis with RQ sales customers, the Commission should require Texas Eastern to modify sections IA(i) and 3.5 of its firm transportation (FTS) Rate Schedule. Algonquin Customers ask the Commission to require Texas Eastern to transport any gas CNG delivers to Texas Eastern for Algonquin or its customers, whether purchased from CNG or not, in order to achieve the settlement's service restructuring objectives."

"Insofar as Algonquin and its LDC resale customers are concerned, the service restructuring objectives of CNG's settlement depend on expanded transportation on Texas Eastern, which is the sole transporter of CD gas sold by CNG to Algonquin. Algonquin does not interconnect directly with CNG. Under Texas Eastern's current FTS tariff, Texas Eastern agrees to transport gas sold under CNG's existing CD Rate Schedule for delivery to CNG's CD customers, including Algonquin. Texas Eastern's FTS tariff, however, does not obligate Texas Eastern to transport gas that CNG proposes to sell to Algonquin (or to other CD customers) under the new restructured CD Rate Schedule, or to transport gas that Algonquin (or other CD customers) may seek to purchase from a supplier other than CNG prior to the expiration of the CD customer's service agreement with CNG."

"The Commission can not revise a Texas Eastern tariff provision in a CNG proceeding because Texas Eastern has not been provided notice of the proposed tariff revision with the opportunity to intervene and comment. Accordingly, the Algonquin Customers' request is denied. However, the Commission will treat the Algonquin Customers' pleading as a complaint under section 5 of the Natural Gas Act. The Commission will give Texas Eastern the opportunity to respond to the Algonquin Customers' complaint in the newly-established Docket No. RP91-179-000. Within 30 days after issuance of this order, Texas Eastern is directed to file its response to the Algonquin Customers' contentions. Any other person potentially affected by the tariff changes urged by the Algonquin Customers may also file a response within 30 days of this order."

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-18205 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-10-4-000]

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 25, 1991.

Take notice that on July 22, 1991, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing Fourth Revised Sheet No. 25 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1991.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that, on July 6, 1991, in Docket Nos. RP88-211, *et al.*, CNG filed revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, in compliance with a Stipulation and Agreement approved by the Commission in an order issued May 7, 1991. Revisions in CNG's Rate Schedule GSS rates were included in CNG's filing, it is stated. According to Granite State, its filing tracks in its Rate Schedule GSS the changes made by CNG in its rates for Rate Schedule GSS service.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

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, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-18204 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-245-004]

## Paiute Pipeline Co., Compliance Filing

July 25, 1991.

Take notice that on July 22, 1991, Paiute Pipeline Company (Paiute) tendered for filing the following tariff sheets to be part of its FERC Gas Tariff, First Revised Volume No. 1-A:

Original Sheet No. 11
First Revised Sheet No. 86
Original Sheet Nos. 87-89

Paiute states that its filing is in compliance with the Commission's order issued June 21, 1991 in Docket No. RP89-245-000, in which the Commission issued rulings on certain issues involving Paiute's recovery from its customers of the take-or-pay buyout and buydown fixed charges billed to Paiute by its former upstream pipeline supplier, Northwest Pipeline Corporation (Northwest). Paiute states that in that order the Commission directed Paiute to recalculate the total allocable portions of the Northwest take-or-pay fixed charges to be assigned to each of Paiute's sales customers by using the 60-month deficiency period utilized by Northwest in computing its allocations. Paiute was also directed to make certain revisions to its related tariff language.

Paiute states that under a settlement approved by the Commission in Docket No. RP88-227, Paiute's four firm sales customers fully converted their firm sales entitlements to firm transportation service effective June 1, 1991, and that Paiute's sales tariff volume was deemed to be cancelled as of that date. Paiute further states that a provision of the settlement provides that Paiute will be able to include provisions governing its passthrough of the Northwest take-or-pay fixed charges in Paiute's transportation tariff following its customers' conversions to firm transportation service and the approval by the Commission of appropriate tariff provisions governing such passthrough. Thus, Paiute proposes in its compliance filing to transfer its take-or-pay buyout and buydown cost passthrough tariff provisions to its transportation tariff, First Revised Volume No. 1-1. However, in transferring such provisions to its transportation tariff, Paiute states that it has continued to allocate the take-or-pay fixed charges from Northwest to only its former firm sales customers, who are now firm transportation customers, from whom Paiute has been authorized to collect such costs.

Paiute asserts that, in compliance with the Commission's order, Paiute has recalculated the total allocable portion of the Northwest take-or-pay fixed charges for each of Paiute's former sales customers utilizing the 60-month deficiency period used by Northwest. In addition, Paiute states that it has calculated revised monthly amounts for each customer for the remainder of the amortization period.

Paiute also indicates that it has made certain revisions to its related tariff language which are consistent with the Commission's order, or which are non-substantive changes to conform the take-or-pay passthrough provisions to Paiute's transportation tariff. Paiute states that as a result of the changes to its tariff language, Paiute has overcollected certain carrying charges from certain of its former sales customers, which Paiute will credit to such customers by means of a billing adjustment.

Paiute requests that the proposed tariff sheets be permitted to become effective June 1, 1991, in order to make such tariff sheets effective upon the date that Paiute's firm service customers converted to firm transportation and Paiute's sales tariff was deemed to be cancelled.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before August 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-18206 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Fossil Energy

[FE Docket No. 91-32-NG]

## Conoco Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to Conoco

Inc. (Conoco) granting blanket authorization to import and export a combined total of up to 50 bullion cubic feet (Bcf) of natural gas, including liquefied natural gas (LNG), from and to any international market, subject to any trade restricitons, over a two-year period beginning with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., July 26, 1991.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 91–18295 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

**[Docket No. FE C&E 91–17; Certification Notice—85]**

## Filing Certification of Compliance: Coal Capability of New Electric Powerplant

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

**SUPPLEMENTARY INFORMATION:** The following company has filed an amended self-certification;

| Name | Date received | Type of facility | Megawatt capacity | Location |
|---|---|---|---|---|
| Oildale Cogeneration Partners L.P.[1] Laguna Hills, CA | 07–15–91 | Topping cycle | 38.0 | Bakersfield, CA |

[1] On November 3, 1983, (48 FR 50787) the Office of Fuels Programs granted an exemption to Turbo-Resources to construct and operate the subject facility with an electrical capacity of 29.0 MW. Oildale Cogeneration Partners, L.P. is the new owner of the facility and will modify it to produce 38.0 MW of electrical power.

Amendments to the FUA on May 21, 1987 (Public Law 100–42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586–6769.

Issued in Washington, DC on July 25, 1991.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.*

[FR Doc. 91–18159 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

## Office of Hearings and Appeals

## Issuance of Decisions and Orders During the Week of April 22 Through April 26, 1991

During the week of April 22 through April 26, 1991, decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Implementation of Special Refund Procedures

*Citronelle-Mobile Gathering, Inc., 04/26/91, KEF–0139*

The DOE issued a Decision and Order implementing procedures for the disbursement of $6,769,957, plus accrued interest, obtained by the DOE as the result of an order of the United States District Court for the Southern District of Alabama, in litigation between the DOE and Citronelle-Mobile Gathering, Inc. (Citronelle). The court ruled that Citronelle and the firm's principal shareholder, Bart B. Chamberlain, violated the federal price regulations in a series of sales to the New England Petroleum Corporation (NEPCO) during the period January through June 1974. The DOE determined that it will distribute these funds in two stages. In the first stage, the DOE will accept claims from identifiable purchasers of petroleum products from NEPCO who may have been injured by the alleged overcharges. It will then submit to the court a final report and recommendation as to the distribution of the Citronelle overcharges. If the report meets with the court's approval, the court may order distribution in accordance with the recommendations in the final report. If any funds remain after meritorious claims are paid in the first stage, they will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (1986). Purchasers of regulated petroleum products from NEPCO during the period January 1 through June 30, 1974 may file Applications for Refund from the Citronelle fund. Applications for Refund must be postmarked by November 15, 1991. Instructions for the completion of refund applications are set forth in the Decision.

### Refund Applications

*Anderson Butane Service, Inc./ Louisiana Standard Oil Company (Indiana)/Louisiana, 04/23/91, RQ14–564, RQ251–567*

The DOE issued a Decision and Order denying the second-stage refund application filed by the State of Louisiana in the Anderson Butane Service and Standard Oil Company (Indiana) special refund proceedings. Louisiana requested permission to spend

$963,336 in Anderson and Amoco II funds on a demonstration facility which would produce sodium silicate from rice hull ash. The facility would be installed in a privately-owned Louisiana power plant which burns rice hulls to produce energy. The DOE found that the proposal failed to deliver timely and balanced energy-related restitution to Louisiana's injured consumers of refined petroleum products because, although the facility would be installed in a Louisiana company, most of the companies and individuals who could potentially benefit from the new technology reside outside the state. The DOE also found that the proposal promoted economic development for a narrow group of Louisianans rather than energy-related restitution to a large number of Louisiana's injured consumers of refined petroleum products. Accordingly, the State's application was denied.

*City of Detroit, 04/25/91, RF272–16040*

The DOE issued a Decision and Order concerning an Application for Refund that the City of Detroit (Detroit) filed in the crude oil overcharge refund proceeding. The DOE determined that Detroit's refund claim was meritorious and granted a refund of $212,093. In that decision, however, the DOE also found that Detroit's purchases of "dry gas" and anti-freeze could not form the basis of a refund because those products were not covered petroleum products.

*Mobay Corporation,* 04/22/91, *RF272–4235, RD272–4235*

The Department of Energy issued a Decision and Order granting a crude oil overcharge refund to Mobay Corporation an end-user of refined petroleum products in the production of chemicals. A consortium of 30 states and 2 territories filed objections and a Motion for Discovery with respect to this application, attempting to rebut the end-user presumption of injury. The DOE found that the end user presumption was applicable and that the Motion for Discovery should be denied. The DOE further determined that two of the products for which Mobay sought a refund, orthene and formaldehyde, are not eligible products in this proceeding. The DOE determined that Mobay should receive a refund of $220,275.

*Riverton Investments Corporation, Martin Marietta Corporation,* 04/26/91, *RF272–29566, RF272–69633, RD272–69633*

Riverton Investment Corporation and Martin Marietta Corporation filed Applications for Refund in the Subpart V crude oil overcharge refund proceeding. In their applications, both Martin Marietta and Riverton claimed a refund based on purchases of petroleum products which were consumed by a cement plant that Martin Marietta had sold to Riverton in 1987. Because the language of the purchase and sales agreement submitted by both applicants indicates that Martin Marietta intended to sell all assets, including those which were unknown and unenumerated at the time of the sale, to Riverton, the DOE found that Riverton was the proper recipient of the refund associated with those petroleum products. Accordingly, Riverton was granted a refund of $3,034, based on the purchases of petroleum products consumed by the cement plant. Martin Marietta was granted a refund of $443,995 based on its purchases of refined petroleum products, excluding those included in Riverton's refund. The DOE rejected objections to the Martin Marietta application filed by a group of state governments and denied their Motion for Discovery.

*Shell Oil Company/ KMOCO Oil Company,* 04/23/91, *RF315–4338*

The DOE issued a Decision and Order partially granting the refund application filed by KMOCO Oil Company in the Shell Oil Company special refund proceeding. KMOCO argued that, in addition to a $5,000 presumption-based refund, it should be granted a refund for the period March 6, 1973 to June 13, 1974. KMOCO stated that in the Atlantic Richfield Company special refund proceeding, resellers were eligible for a volumetric refund for that period because, although the period of price controls began on March 6, 1973, resellers were not required to keep records until June 13, 1973. The DOE denied KMOCO's request on the grounds that no provision was made in the Shell refund proceeding for such supplemental refunds, and also noted that KMOCO's request was untimely, as it is impossible at this late date to change the procedures under which a reseller is granted a refund. Accordingly, KMOCO was limited to a refund of $6,776 ($5,000 in principal plus $1,776 in interest).

*State of New Hampshire,* 04/26/91, *RF272–62009*

The DOE issued a Decision and Order granting a crude oil overcharge refund to the State of New Hampshire. The applicant was granted a refund based on the refined petroleum product purchases of its central purchasing office, which purchased refined petroleum products on behalf of all of the state's agencies, including hospitals, prisons and state universities. The refund granted to New Hampshire was $32,609.

*Texaco Inc./Battery Oil Corp., Gram Oil Corp. 04/24/91, RF321–4461, RF321–4462*

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund filed by Battery Oil Corp. and Gram Oil Corp., resellers of Texaco refined petroleum products. A single stockholder owns 50 percent of Gram's stock and 40 percent of Battery's stock. The applicants stated they accepted the applicable presumption of injury and therefore they were not required to demonstrate injury. Although Battery and Gram are related, the DOE found that it would be inequitble to the minority shareholders of both firms to treat Battery and Gram as affilated firms. This would limit the total refund granted to Battery and Gram to $50,000, thereby reducing the refunds which the minority owners of both firms would otherwise receive. Accordingly, the firms received individual refunds under the medium-range presumption of injury. The total of the refunds granted to both applicants in this Decision is $75,507 ($61,144 principal plus $14,363 interest).

*Texaco Inc./Callicoatte Texaco, 04/26/91, RF321–3219, RF321–8681*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The applications were on behalf of a consigneeship owned and operated by Louie B. Callicoatte, until his death on December 4, 1977. From then until the end of the consent order period the business was operated by Louie B. Callicoatte's son, Jimmy Callicoatte. The refund approved for the period that Louie B. Callicoatte operated the consigneeship was granted to the executor of Louie B. Callicoatte's estate, for distribution according to his Last Will and Testament. The refund approved for the period after Louie B. Callicoatte's death was granted to Jimmy Callicoatte's children, Vincent and Alison Callicoatte, who were the heirs to his estate. The sum of the refunds granted in this Decision is $8,338 ($6,752 principal and $1,586 interest).

*Texaco Inc./Claud Hodges Texaco, 04/23/91, RF321–14794*

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by Claud Hodges (Hodges), a retailer of Texaco products. Hodges was previously granted a refund based on his claim that he operated the retail outlet from September 1973 to July

1978. Subsequently, the OHA received two other refund applications requesting a refund based on purchases at the same location during part of the same time period that Hodges claimed to have operated the station. In view of the conflicting claims, on March 15, 1991, the OHA issued a Decision and Order requiring Hodges to show good cause why the refund should not be modified. Hodges failed to respond within 30 days. Accordingly, the DOE found that Hodges should repay, with interest, the amount of the excessive refund. The total repayment ordered was $1,459 ($1,172 principal plus $287 interest).

*Texaco Inc./Ridge Service Station, 04/26/91, RF321–59*

Ridge Service Station (Ridge) filed a Motion for Reconsideration of a March 18, 1991 Decision and Order in which the DOE denied duplicate refund applications submitted in the Texaco special refund proceeding by Thomas Ceraso, the outlet's owner. In the Motion, Mr. Ceraso stated that he believed that the first application, which had been filed by a private "filing service," Akins Energy, Inc. (Akin), had been a supplement to a pending refund application that Akin had filed on behalf of Ridge in the Exxon special refund proceeding. In considering the Motion, the DOE found Mr. Ceraso's statement was not credible since the Akin application and a statement authorizing Akin to represent Ridge, both of which had been signed by Mr. Ceraso, clearly indicated they were in connection with the Texaco refund proceeding. Accordingly, there was no basis to reconsider the finding in the March 18 Decision that Mr. Ceraso falsely certified in the duplicate application that he had not previously authorized anyone to file a Texaco refund application. The determination in the March 18 Decision that both refund applications should be denied on the grounds of "unclean hands" was therefore affirmed, and the Motion for Reconsideration was denied.

*Time Oil Company/Defense Fuel Supply Center, 04/22/91, RF334–1*

The DOE issued a Decision and Order granting a refund totalling $620,457 ($325,000 principal and $295,457 interest) to the Defense Fuel Supply Center. The principal amount of the refund was specifically earmarked for the DFSC in the Consent Order with Time Oil, as restitution for alleged overcharges on aviation jet fuel.

*W.J. Runyon and Son, Inc., 04/25/91, RA272–00036*

The DOE issued a Supplemental Order granting W.J. Runyon and Son, Inc. an additional refund of $7,354 in the subpart V crude oil overcharge refund proceeding.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Atlantic Richfield Co./F & S Fuel & Supply Co., Inc. *et al* | RF304-3372 | 04/22/91 |
| Atlantic Richfield Co./Garrett's ARCO #1 *et al* | RF304-10498 | 04/23/91 |
| Atlantic Richfield Co./Joyce Iron & Metal Co. *et al* | RF304-3300 | 04/25/91 |
| Atlantic Richfield Co./L & R Terminals, Inc. *et al* | RF304-9220 | 04/25/91 |
| Atlantic Richfield Co./Village Arco *et al* | RF304-10139 | 04/23/91 |
| B.F. Goodrich Company | RF272-23465 | 04/23/91 |
| B.F. Goodrich Company | RD272-23465 | |
| B.F. Goodrich | RF272-73871 | |
| Exxon Corporation/Carl's Hillcrest Exxon | RF307-10174 | 04/24/91 |
| Back River Exxon | RF307-10175 | |
| Weaver's Auto Service | RF307-10176 | |
| General Felt Industries | RF272-24950 | 04/23/91 |
| General Felt Industries | RD272-24950 | |
| Gold Bond Building Products | RF272-63111 | 04/22/91 |
| Gold Bond Building Products | RD272-63111 | |
| Gold Bond Building Products | RF272-49158 | |
| Gulf Oil Corp./H & G Holt, Inc. *et al* | RF300-11533 | 04/25/91 |
| Gulf Oil Corp./Ryder's Gulf Service *et al* | RF300-11700 | 04/26/91 |
| Gulf Oil Corp./Stop & Shop *et al* | RF300-11055 | 04/25/91 |
| Gulf Oil Corp./Willis Gulf Service *et al* | RF300-11007 | 04/25/91 |
| Monarch Asphalt Company *et al* | RF272-21860 | 04/22/91 |
| Nonarch Asphalt Company | RD272-21860 | |
| National Refractories & Minerals Corporation | RF272-22389 | 04/23/91 |
| National Refractories & Minerals Corporation | RD272-22389 | |
| Stroh Brewery Co. | RF272-23367 | 04/26/91 |
| Stroh Brewery Co. | RD272-23367 | |
| Jos. Schlitz Brewing Co. | RF272-23368 | |
| Jos. Schlitz Brewing Co. | RD272-23368 | |
| Tesoro Petroleum Corporation/The Coastal Corporation *et al* | RF326-23 | 04/24/91 |
| Texaco Inc./Broadway Texaco *et al* | RF321-6600 | 04/22/91 |
| Texaco Inc./City of Winchester, Virginia *et al* | RF321-7101 | 04/25/91 |
| Texaco Inc./Gateway Texaco *et al* | RF321-277 | 04/26/91 |
| Texaco Inc./Jim Mortinson, Inc. | RF321-7417 | 04/24/91 |
| James F. Mortinson | RF321-7418 | |
| James F Mortinson | RF321-7419 | |
| Texaco Inc./R.V. Kelley *et al* | RF321-6800 | 04/25/91 |
| Texaco Inc./Sterling Sugars, Inc. *et al* | RF321-6300 | 04/25/91 |
| Texaco Inc./Stewart's Texaco *et al* | RF321-1400 | 04/25/91 |
| Time Oil Company/U-Save Oil Company | RF334-2 | 04/26/91 |
| Velsicol Chemical Corporation | RF272-53853 | 04/25/91 |
| Velsicol Chemical Corporation | RD272-53853 | |
| Velsicol Chemical Corporation | RF272-62413 | |
| Velsicol Chemical Corporation | RD272-62413 | |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Beard's Gulf | RF300-13560 |
| Boone's Texaco | RF321-867 |
| Carter's Arco | RF304-4562 |
| Caulder Truck Stop | RF300-14270 |
| D.Z. Gulf | RF300-14867 |
| David Dekok | LFA-0114 |
| Dearman Oil Co | RF300-12288 |
| Dembreck's Gulf | RF300-11639 |
| Doug's Texaco | RF321-14476 |
| Federal Arco | RF304-9780 |
| Frizzie's Tire Service | RF304-11659 |
| Gerry's Gulf Station | RF300-14370 |
| Gold Kist, Inc | RF321-5949 |
| Harleyville One Stop | RF300-14411 |
| Harper's Car Wash | RF321-3361 |
| Highway 33 Gulf | RF300-14778 |
| J.L. Culpepper & Co | RF300-12175 |
| Jack Witt Shell | RF315-8658 |
| Joe Zalta | RF300-14868 |
| Ken-Wil Oil Co., Inc | RF115-9 |
| Luke Oil Company, Inc | RF304-4419 |
| Malabu Shell | RF315-8645 |
| McGil Specialized Cariers, Inc | RF272-86542 |
| Miller's Gulf | RF300-15652 |
| Reese's Arco | RF304-11490 |
| Russell's Gulf | RF300-14847 |
| Simonton Oil Co | RF300-15152 |
| Stamatis G. Passas | RF300-11683 |
| Steed's Gulf | RF300-14263 |
| Thomas Hippenmeyer | RF315-10112 |
| University Texaco | RF321-1434 |
| Winding Transportation Co | RF272-36219 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washingotn, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 26, 1991.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 91-18298 Filed 7-31-91; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders During the Week of May 20 Through May 24, 1991

During the week of May 20 through May 24, 1991, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Implementation of Special Refund Procedures**

*John R. Adams, 5/21/91, LEF-0020*

The DOE issued a Decision and Order implementing special refund procedures to distribute $105,000.00, plus accrued interest, remitted to the DOE by John R. Adams (Adams), formerly doing business as J.R. Adams Oil Company, in settlement of alleged violations of petroleum price and allocation regulations. The DOE determined that it would distribute the Adams settlement monies through a refined product refund proceeding in accordance with the DOE regulations codified at 10 CFR, part 205, subpart V. The Adams settlement monies will be disbursed in the following two stages: refunds to purchasers of regulated Adams petroleum products in the first stage and transfer of monies remaining after the payment of all eligible first-stage claims to the states as mandated by the Petroleum Overcharge Distribution and Restitution Act of 1986.

**Refund Applications**

*Aminoil U.S.A., Inc./Plymouth LP Gas Corporation, 5/24/91, RR139-70*

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Plymouth LP Gas Corporation in the Aminoil U.S.A., Inc., special refund proceeding. The firm's initial Application for Refund was granted under a $5,000 small claims presumption. In reviewing the Application, the DOE found that Plymouth was eligible for a refund based upon its full volumetric share of the consent order funds for its purchase of 8,623,052 gallons of covered products. As a result, Plymouth's Motion for Reconsideration was approved for $123,061 in principal, plus accrued interest.

*Atlantic Richfield Company/Vern's ARCO, et al., 5/20/91, RF304-4001, et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by Petroleum Funds, Inc. (PFI) on behalf of Vern's ARCO, *et al.*, in the Atlantic Richfield Company special refund proceeding. The firms failed to submit any documentation or other material to indicate that they had ever purchased any refined products from ARCO. Although PFI was repeatedly contacted to provide the necessary information, they failed to do so. Accordingly, the Applications were denied.

*Ciba-Geigy Corporation, Sun Chemical—Pigments Division, J.T. Baker, Inc., 5/23/91, RF272-64327, RD272-64327, RF272-64994, RD272-64994, RF272-70116, RD272-70116*

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Ciba-Geigy Corporation, Sun Chemical—Pigments Division (Sun), and J.T. Baker, Inc., based upon their purchases of refined petroleum products between August 19, 1973, and January 27, 1981. The applicants used the petroleum products in their chemical manufacturing and packaging operations. The applicants were end-users of the refined petroleum products and were therefore presumed injured. A consortium of states and territories (the States) filed Statements of Objection and Motions for Discovery with respect to the Applications. The DOE found that the States' filings were insufficient to rebut the presumption of injury. Threfore, the Applications for Refund were granted, and the States' Motions for Discovery were denied. Specifically, the DOE determined that Ciba-Geigy Corporation was eligible to received a refund for its purchases of magie oil, because the evidence indicated that this product was produced at a refinery and was covered by the EPAA regulations. The DOE conversely determined that Sun was not eligible to receive a refund for its purchases of Naphthalene because it concluded that this product was a petrochemical and therefore not eligible for the purposes of this proceeding.

*Gulf Oil Corporation/Five Points West Gulf, 5 Points Gulf, 5/21/91, RF300-12282, RF300-16717*

The DOE issued a Decision and Order granting a refund to Mr. Bill Rorie (Case No. RF300-12282) and rescinding a refund (Case No. RF300-16717) that had been granted to Mr. Paul Alexander. Mr. Alexander received a refund based on written certification from Mr. Rorie that he had transferred his right for a refund to Mr. Alexander in selling him his service station. The DOE found that this certification was not genuine and determined that Mr. Rorie was the party eligible for a refund. The DOE therefore rescinded the refund of $2,020 that Mr. Alexander had received and granted a refund of $2,598 to Mr. Rorie.

*IMCO Services Halliburton Services, 5/22/91, RF272-22394, RD272-22394, RF272-22395, RD272-22395*

The DOE issued a Decision and Order granting Subpart V crude oil refund Applications filed by IMCO Services and Halliburton Services, based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants,

both oil field drilling contractors, demonstrated the volumes of their claims by using contemporaneous records and reasonable estimates. The applicants were end-users of the products they purchased and were therefore presumed injured. A group of states and terrirories of the United States (the States) objected to the Applications, contending that the firms were not injured because they were able to pass through to customers any overcharges they suffered due to the elasticities of supply and demand that exist in any industry. The applicants, in a Response to the States' Objection, admitted that they were able to pass through 40 percent of the over-charges. Accordingly, the DOE granted the applicants refunds equal to 60 percent of their full volumetric claims. The total of the refunds disbursed in this Decision was $106,348. The DOE also denied the Motions for Discovery filed by the States in these cases.

*Murphy Oil Corporation/Power Pak, Inc., et al.*, 5/21/91, *RF309-493, et al.*

The DOE issued a final Decision and Order concerning Applications for Refund submitted on behalf of two retail motor gasoline outlets in the Murphy Oil Corporation (Murphy) special refund proceeding. The DOE issued a proposed Decision and Order regarding these Applications for Refund, which tentatively concluded that the former owner of the assets of both stations was the proper recipient of any refund granted on the basis of the stations' Murphy purchases. After considering all comments concerning the proposed determination, the DOE concluded that its tentative findings were correct and adopted them in a final Decision. Accordingly, the former owner was granted a refund of $6,766 ($4,938 in principal and $1,828 in interest) based on the stations' combined purchase volume of 16,652,902 gallons of regulated Murphy petroleum products. In the final Decision, the DOE also determined that the new owner of one of the station's assets was ineligible for the refund of $5,147 previously disbursed and will be required to return this amount to the Murphy escrow account.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Agway, Inc./Consolidated Edison Co. of NY | RF324-2 | 05/24/91 |
| Reid Petroleum Corporation | RF324-19 | |
| Davus Oil Co | RF324-28 | |
| Atlantic Richfield Co./Anderson & Watkins, Inc | RF304-79 | 05/20/91 |
| Atlantic Richfield Co./ARCO Truck Terminal *et al* | RF304-5148 | 05/21/91 |
| Atlantic Richfield Co./Brewer Propane Gas, Inc | RF304-3582 | 05/23/91 |
| Brewer Propane Gas, Inc | RF304-3583 | |
| Brewer Propane Gas, Inc | RF304-3590 | |
| Brewer Brothers, Inc | RF304-3790 | |
| Atlantic Richfield Co./Harkleroad Oil Company, Inc | RF304-12283 | 05/20/91 |
| Atlantic Richfield Co./McDowell Oil Service, Inc | RF304-4973 | 05/20/91 |
| Atlantic Richfield Co./Wilson Oil Co. *et al* | RF304-11470 | 05/22/91 |
| Avtex Fibers Front Royal, Inc | RF272-49245 | 05/23/91 |
| Avtex Fibers Front Royal, Inc | RD272-49245 | |
| Evans Oil & Gas, Inc | RF272-61123 | 05/24/91 |
| Exxon Corporation/Clarence J. Rulon | RF307-10188 | 05/24/91 |
| Exxon Corporation/Dave Starmer Exxon | RF307-10156 | 05/20/91 |
| Gulf Oil Corp./AU Rust Proofing Center, Inc. *et al* | RF300-12420 | 05/20/91 |
| Gulf Oil Corp./C&P Telephone Co. of MD. *et al* | RF300-11169 | 05/22/91 |
| Gulf Oil Corp./H.J. Truxillo, Inc | RF300-12448 | 05/20/91 |
| H.J. Truxillo, Inc | RF300-12449 | |
| Gulf Oil Corp./Jerry's Gulf Service | RF300-16308 | 05/23/91 |
| Gulf Oil Corp./Milazzo Oil Company | RF300-11601 | 05/22/91 |
| Gulf Oil Corp./Waccasassa Gulf *et al* | RF300-11515 | 05/21/91 |
| Heldenfels Brothers, Inc | RF272-25223 | 05/23/91 |
| Heldenfels Brothers, Inc | RD272-25223 | |
| Puerto Rican Cement Co., Inc | RF272-28145 | |
| Puerto Rican Cement Co., Inc | RD272-28145 | |
| Boh Bros. Construction Co. Inc | RF272-27532 | |
| Boh Bros. Construction Co. Inc | RD272-27532 | |
| John Royster | RC272-119 | 05/23/91 |
| Nayak Aviation Corp | RF272-63686 | 05/24/91 |
| Quabaug Corp. *et al* | RF272-65506 | 05/22/91 |
| Ferguson Brothers Construction Co | RD272-67071 | |
| Shell Oil Company/Bruce J. Sirchio *et al* | RF315-8600 | 05/22/91 |
| Shell Oil Company/Crystal Petroleum Company | RF315-8387 | 05/21/91 |
| Shell Oil Company/Randall B. Strickland | RF315-6137 | 05/22/91 |
| State of California | RF272-67248 | 05/24/91 |
| Texaco Inc./Army & Air Force Exchange Service *et al* | RF321-6625 | 05/22/91 |
| Texaco Inc./Burger Bros | RF321-5090 | 05/24/91 |
| Johnny McCullogh Texaco | RF321-11987 | |
| Wenham Transportation, Inc | RF272-75673 | 05/21/91 |
| West Springfield Public Schs. *et al* | RF272-61606 | 05/23/91 |

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Andy's Arco | RF304-3356 |
| Barjas Sweis Texaco | RF321-12123 |
| Bill Beam's Texaco | RF321-3725 |
| Billy's Texaco, Inc | RF321-3720 |
| Bob Magari Texaco | RF321-846 |
| Bob's Texaco | RF321-13640 |
| Bob's Texaco | RF321-3721 |
| Burkhardt's Texaco | RF321-4604 |
| Carey's Texaco | RF321-9624 |
| Chuck's Texaco & Hula Wash | RF321-14829 |
| Crossroads Texaco | RF321-2620 |
| Dodge Moving and Storage | RF272-62718 |

| Name | Case No. |
|---|---|
| Ernie's Texaco | RF321-4795 |
| Fletcher's Texaco | RF321-227 |
| Fort Thomas Texas Texaco | RF321-3716 |
| Garden City Texaco | RF321-3931 |
| Grafton Texaco | RF321-305 |
| Hemingway Transport Inc | RF272-75981 |
| Jim Williams Texaco | RF321-4792 |
| Johnson Texaco | RF321-1138 |
| Keck's Service Center | RF321-3723 |
| Lee Hy Paving Company | RF272-64964 |
| Missouri Agricultural Experiment Station. | RF272-67499 |
| Missouri Agricultural Experiment Station. | RF272-67498 |
| Missouri Agricultural Experiment Station. | RF272-67504 |
| Missouri Foundation Seeds | RF272-67505 |
| Mitch's Texaco | RF321-3727 |
| Park Hill Texaco | RF321-14436 |
| Park Square Texaco | RF321-3440 |
| Plymouth Oil, Inc | RF315-0958 |
| Quiett's Texaco Station | RF321-14433 |
| R&L Texaco | RF321-1217 |
| Randy's Shell Service | RF315-4499 |
| Riverview Texaco | RF321-3719 |
| Salyer's Texaco | RF321-14103 |
| Scarsdale Avenue Texaco | RF321-2546 |
| Sunset Texaco | RF321-2942 |
| Thirty-Fifth & Harrison Texaco | RF321-3718 |
| Tilcon Delaware, Inc | RF272-3976 |
| Tilcon Delaware, Inc | RF272-3976 |
| Timberlake Texaco | RF321-3726 |
| Vrabics Texaco | RF321-1462 |
| Wayne R. Wilson Texaco | RF321-2570 |
| Wickford Shipyard, Inc | RF321-2581 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 26, 1991.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 91-18299 Filed 7-31-91; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3979-2]

### Fuels and Fuel Additives; Waiver Application

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** On July 12, 1991, the Ethyl Corporation (Ethyl) submitted an application for a waiver of the prohibition against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). This application seeks a waiver for the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of up to 0.03125 (1/32) gram per gallon manganese (gpg Mn). The Administrator of EPA has until January 8, 1992 to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

**DATES:** EPA will conduct a one-day public hearing on this application beginning at 9 a.m. on September 13, 1991 at the U.S. EPA Auditorium located in the EPA Education Center (Northwest Mall Entrance), 401 M Street SW., Washington, DC 20460. Comments on this application will be accepted until October 4, 1991. Parties wishing to testify at the hearing should contact David J. Kortum or James W. Caldwell by September 6, 1991 at (202) 382-2635 (after August 23, 1991, the number will be (202) 260-8841). It is also requested that six copies of prepared hearing testimony be available at the time of the hearing for distribution to the hearing panel. Hearing testimony should also be submitted to the docket. Additional information on the submission of comments to the docket may be found below in the **"ADDRESSES"** section of this notice.

**ADDRESSES:** Copies of the information relative to this application are available for inspection in public docket A-91-46 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8841 (after August 23, 1991: (202) 260-8841).

**SUPPLEMENTARY INFORMATION:** Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 56 FR 5352 (February 11, 1991). Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which apply only to light-duty vehicles. Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny an application for a waiver within 180 days of receipt of the application (in this case, by January 8, 1992), the statute provides that the waiver shall be treated as granted.

The current submission by Ethyl is an application under section 211(f)(4) of the Act for a waiver for the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of up to 0.03125 (1/32) gram per gallon manganese (gpg Mn). This is Ethyl's fourth application for a waiver for MMT. Ethyl's first application was submitted on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. Ethyl's second application was submitted on May 26, 1981 for concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. The Administrator denied these requests for waivers. The decision and justification thereof may be found in the September 18, 1978 **Federal Register**, 43 FR 41424, and the December 1, 1981 **Federal Register**, 46 FR 58630. Ethyl's third

application, was submitted on May 9, 1990, for concentrations of MMT resulting in a level of up to 0.3125 (1/32) gpg Mn in unleaded gasoline (the same level which is requested in the application which is the subject of today's notice). Ethyl withdrew its third application on November 1, 1990, before the deadline for the Administrator to make a determination on the application. Because no determination had been made at the time the applicant withdrew the application, EPA accepted the withdrawal and immediately terminated the proceeding without action on the application.

If the prohibitions against MMT were waived by the Administrator, it is highly likely that most U.S. gasoline would contain MMT, and, therefore, it is also highly likely that fuels used in certifying vehicles under section 206 of the Act, would be required to reflect this compositional change. EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: July 24, 1991.

**Michael Shapiro,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 91-17988 Filed 7-31-91; 8:45 am]

BILLING CODE 6560-50-M

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[OPTS-59290B; FRL-3938-1]

## Certain Chemicals; Approval of Modification to Test Marketing Exemption

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of modifications of the test marketing periods for three test marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME-91-2, TME-91-3, and TME-91-4. The test marketing conditions are described below.

**EFFECTIVE DATES:** July 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2440. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME-91-2, TME-91-3, and TME-91-4. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and modification request, and for the modified time periods specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

**T-91-2**

*Notice of Approval of Original Application:* January 18, 1991 (56 FR 2017).

*Modified Test Marketing Period:* 6-month extension from the original 6 months.

**T-91-3**

*Notice of Approval of Original Application:* January 18, 1991 (56 FR 2017).

*Modified Test Marketing Period:* 6-month extension from the original 6 months.

**T-91-4**

*Notice of Approval of Original Application:* January 18, 1991 (56 FR 2017).

*Modified Test Marketing Period:* 6-month extension from the original 6 months.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: July 24, 1991.

**John W. Melone,**

*Director, Chemical Control Division, Office of Toxic Substances.*

[FR Doc 91-18282 7-31-91; 8:45 am]

BILLING CODE 6560-50-F

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection requirement submitted for Review

July 23, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

*OMB Number:* 3060-0185.

*Title:* Section 73.3613, Filing of Contracts.

*Action:* Extension.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of responses:* Recordkeeping requirement and on occasion reporting.

*Estimated annual burden:* 1,800 responses, 3,717 recordkeepers, .5 hours per response and per recordkeeper, 2,759 hours total annual burden.

*Needs and Uses:* Section 73.6316 requires that licensees of TV and low power TV broadcast stations file with the FCC copies of network affiliation contract, instruments, and documents together with amendments, supplements and cancellations. In addition, all broadcast station licensees are required to file contracts, instruments or documents relating to ownership or control and personnel. Certain contracts, agreements or understandings need not be filed with the FCC, but must be retained at the station and be made available for inspection upon request by

the FCC. The contracts filed with the FCC and filed in the station file are used by the FCC to assure that a licensee maintains full control over the operation and maintenance of the Station.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 91-18154 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Manatee County Port Authority Banana Services, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-200551.

*Title:* Manatee County Port Authority/Banana Services, Inc. Terminal Agreement.

*Parties:* Manatee County Port Authority Banana Services, Inc.

*Synopsis:* The Agreement, filed July 22, 1991, provides for the 5-year lease of a transit warehouse for fresh fruits, vegetables, juices and other general cargo. The Agreement also provides for priority vessel berthing, guaranteed annual cargo volumes, and wharfage incentive rates.

By Order of the Federal Maritime Commission.

Dated: July 29, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91-18221 Filed 7-31-91; 8:45 am]

BILLING CODE 6730-01-M

**[Agreement No. 217-011324-002]**

### Transpacific Space Utilization Agreement; Correction

In the **Federal Register** notice of July 16, 1991 (56 FR 32431), concerning subject agreement, Yang Ming Lines should not have been listed as an independent carrier party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: July 29, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91-18220 Filed 7-31-91; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR 540, as amended:

Club Med Sales, Inc. and Services et Transports Cruise Lines, 40 West 57th Street, New York, NY 10019, Vessel: CLUB MED 1.

Dated: July 29, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91-18219 Filed 7-31-91; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

July 26, 1991.

### Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension without revision of the following reports:

*1. Report title:* Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debt Previously Contracted.

*Agency form number:* FR 4006.

*OMB Docket number:* 7100-0129.

*Frequency:* Annual.

*Reporters:* Bank holding companies.

*Annual reporting hours:* 3000.

*Estimated average hours per response:* 5.

*Number of respondents:* 600.

*Significant effect on small business is not expected.*

*General description of report:* This information collection is required by law (12 U.S.C. 1843(c)(2) and 1844(c)). Certain portions may be given confidential treatment at applicant's request (5 U.S.C. 552(b)(4)).

*Abstract:* Bank holding companies that acquire assets in satisfaction of debts previously contracted are required to submit an annual report to the Board on the progress made to dispose of assets or shares that have been held two years beyond the initial date of their acquisition. The report is submitted by letter, does not have a required format, and serves to identify potentially unsound situations and to encourage timely compliance with the divestiture requirement as contained in the statutes and regulation.

*2. Report title:* Report of Bank Holding Company Intercompany Transactions and Balances.

*Agency form number:* FR Y-8.

*OMB Docket number:* 7100-0126.

*Frequency:* Semiannual.

*Reporters:* Bank holding companies

*Annual reporting hours:* 10,080.

*Estimated average hours per response:* 9.

*Number of respondents:* 550.

*Small businesses are not affected.*

*General description of report:* This report is mandatory (12 U.S.C. 1844(c)) and collects data required to supervise bank holding companies and their subsidiary banks. The data gathered on the form is accorded confidential treatment (5 U.S.C. 552b(8)).

*Abstract:* This report collects data on the transactions between a domestic bank holding company (or its nonbank subsidiaries) and its subsidiary banks. The information collected enables the

Federal Reserve to identify categories of intercompany funds flows, internal transactions and balances that may have an adverse impact on the safety and soundness of federally-insured bank subsidiaries of bank holding companies.

A one-year interim extension is needed to allow sufficient time to review the reporting requirements in view of the restrictions placed on intercompany transactions by sections 23A and 23B of the Federal Reserve Action and other applicable regulations. These modifications have become necessary to address supervisory and regulatory concerns arising from recent significant increases in intercompany transactions.

*Final approval under OMB delegated authority of the implementation of the following report:*

*Report title:* Survey of the Nation's Check-Collection System.

*Agency form number:* R 3065.

*OMB Docket number:* 7100–0251.

*Frequency:* One-time.

*Reporters:* Certain depository institutions.

*Annual reporting hours:* 40,000.

*Estimated average hours per response:* 80.

*Number of respondents:* 500.

*Small businesses are not affected.*

*General description of report:* This information collection is voluntary (12 U.S.C. 4001 et seq.) and individual respondent data from the depository institutions are given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* The Reserve proposes to participate with the Bank Administration Institute (BAI) in a survey of the nation's check-collection system. The survey would involve a sample of some 500 depository institutions nationwide and is aimed at providing an accurate, up-to-date description of the U.S. check-collection system and clearing patterns at both the national and regional levels, as well as on a bank-size basis. The survey would provide information regarding forward collection and returned check processes, as well as the increasing use of electronic check services.

Board of Governors of the Federal Reserve System, July 26, 1991.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 91–18223 Filed 7–31–91; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** National Institute on Drug Abuse, ADAMHA, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

**FOR FURTHER INFORMATION CONTACT:** Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443–6014.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408–727–5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–691–9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bellin Hospital-Toxicology Laboratory, 2789 Allied Street, Green Bay, WI 54304, 414–496–2487

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117

Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, Suite 200, Columbia, SC 29206, 800–848–4245/803–782–2700

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–826/800–833–3984

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I 10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P. O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800

ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–225–9414 (outside MI)/800–328–4142 (MI only)

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 818–718–0115/800–331–8670 (outside CA)/800–464–7081 (CA only), (name changed: formerly Abused Drug Laboratories)
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466
Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439
Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309–672–4928
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391(outside VA)
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (NC only)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050, (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680
Pathlab, Inc., 16 Concord, El Paso, TX 79906, 800–999–7284
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211
Regional Toxicology Services, 15305 NE. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061

The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
S.E.D. Medical Laboratories, 500 Walter NE., Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, 2nd Floor, Maple Heights, OH 44137, 800–338–0166 outside OH/800–362–8913 inside OH
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305–593–2260

**Charles R. Schuster,**

*Director, National Institute on Drug Abuse.*

[FR Doc. 91–18238 Filed 7–31–91; 8:45 am]

BILLING CODE 4160–20–M

## Centers for Disease Control

### RF-Induced Body Current and Absorbed Power Determinations; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

*Name:* RF-Induced Body Current and Absorbed Power Determinations.

*Time and Date:* 9 a.m.–2:30 p.m., August 22, 1991.

*Place:* Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

*Status:* Open to the public, limited only by the space available.

*Purpose:* To conduct an open meeting for the review of a research protocol for a study to determine the effect of operator posture and workstation furniture on exposure (ankle current) of RF heater operators.

*Contact Person for Additional Information:* David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–27, Cincinnati, Ohio 45226, telephone 513/533–8482 or FTS 684–8482.

Dated: July 26, 1991.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 91–18217 Filed 7–31–91; 8:45 am]

BILLING CODE 4160–19–M

## Food and Drug Administration

**[Docket No. 91F–0254]**

### Exxon 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 Exxon Chemical Co. has filed a

petition proposing that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins as a component of polypropylene film intended to contact food.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**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 petition (FAP 1B4267) has been filed by Exxon Chemical Co., P.O. Box 241, Baton Rouge, LA 70821, proposing that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins for use as a component of polypropylene film intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds than 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 regulations in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 26, 1991.

**L. Robert Lake,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 91–18312 Filed 7–31–91; 8:45 am]

**BILLING CODE 4160–01–M**

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**[Docket No. 91F–0264]**

## Stockhausen, Inc.; Filing of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Stockhausen, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-((3-dimethylamino) propyl)-2-propenamide, polymer with 2-propenoic acid, sodium salt as a dispersing aid in paper and paper coatings intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

**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 petition (FAP 9B149) has been filed by Stockhausen, Inc., 2408 Doyle St., Greensboro, NC 27406. The petition proposes to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) to provide for the safe use of *N*-((3-dimethylamino) propyl)-2-propenamide, polymer with 2-propenoic acid, sodium salt as a dispering aid in paper and paper coatings intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmenal impact statement is not required and this petiton results in a regulation, the notice of avilability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 26, 1991.

**L. Robert Lake,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 91–18313 Filed 7–31–91; 8:45 am]

**BILLING CODE 4160–01–M**

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## Social Security Administration

**[Social Security Ruling SSR 91–7c]**

## Supplemental Security Income—Disability Standards for Children

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Social Security ruling.

**SUMMARY:** In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91–7c. This Ruling is based on the U.S. Supreme Court decision in *Sullivan* v. *Zebley*, which ruled that the Secretary could not use the regulations then in effect for determining disability in children to deny child disability benefits under the supplemental security income program. Because of this decision, the Commissioner also gives notice that the following Social Security Rulings have been rescinded: SSR 83–19 and SSR 85–21c, and this Ruling supersedes SSR 82–52, SSR 82–53, and SSR 86–8 to the extent these Social Security Rulings discuss the former procedures used to determine disability in children.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (301) 965–1711.

**SUPPLEMENTARY INFORMATION:** Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income)

Dated: July 11, 1991.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

### Section 1614(a)(3)(A) of the Social Security Act (42 U.S.C. 1382c(a)(3)(A)) Supplemental Security Income—Disability Standards for Children

20 CFR 416.924 and 416.994(c)

*Sullivan* v. *Zebley*, 110 S. Ct. 885 (1990).

(The following Social Security Rulings (SSR) have been rescinded: SSR 83–19, Cumulative Edition (C.E.) 1981–1985, p. 370 and SSR 85–21c, C.E. 1981–1985, p. 818. This Ruling supersedes SSR 82–52, C.E. 1981–1985, p. 328, SSR 82–53, C.E. 1981–1985, p. 312, and SSR 86–8, C.E. 1986, p. 78 to the extent these SSRs discuss the former procedures used to determine disability in children.)

Section 1614(a)(3)(A) of the Social Security Act (the Act) (42 U.S.C. 1382c(a)(3)(A)) authorizes the payment of supplemental security income (SSI) benefits to children who suffer from impairments of "comparable severity" to impairments that would render adults

(workers) disabled. The Secretary's former regulations at 20 CFR 416.924 generally provided that a child under age 18 would have been found disabled for purposes of eligibility for SSI benefits only if he or she was found to have an impairment(s) which met the duration requirement and which met or equaled an impairment listed in appendix 1, subpart P of Regulations No. 4, the Listing of Impairments. The Supreme Court decided that the Secretary's former regulations implementing the law for evaluating disability in children did not adequately reflect congressional intent. The Court held that the "listings-only" approach used to evaluate the disabilities of children did not carry out the "comparable severity" standard of the Act, in that the listings were set at a level of severity stricter than the level at which an adult can be found disabled and the Secretary's former policies did not provide for an assessment of overall functional impairment.

Blackmun, Supreme Court Justice:

This case concerns a facial challenge to the method used by the Secretary of Health and Human Services to determine whether a child is "disabled," and therefore eligible for benefits under the Supplemental Security Income Program, title XVI of the Social Security Act, as added, 86 Stat. 1465, and amended, 42 U.S.C. 1381 *et seq.* (1982 ed. and Supp. V).

I

In 1972, Congress enacted the Supplemental Security Income Program (SSI) to assist "individuals who have attained age 65 or are blind or disabled" by setting a guaranteed minimum income level for such persons. 42 U.S.C. 1381. The program went into effect January 1, 1974. Currently, about 2,000,000 claims for SSI benefits are adjudicated each year. Of these, about 100,000 are child-disability claims.[1]

A person is eligible for SSI benefits if his income and financial resources are below a certain level, section 1382(a), and if he is "disabled." Disability is defined in section 1382c(a)(3) as follows:

(A) An individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

This statutory definition of disability was taken from Title II of the Social Security Act, 42 U.S.C. 423 *et seq.*, as amended (providing for payment of insurance benefits to disabled workers who have contributed to the Social Security Program). See Sections 423(d)(1)(A) and (d)(2)(A) (definitions of disability).

Pursuant to his statutory authority to implement the SSI Program,[2] the Secretary has promulgated regulations creating a 5-step test to determine whether an *adult* claimant is disabled. See *Bowen* v. *Yuckert*, 482 U.S. 137, 140–142, 107 S.Ct. 2287, 2290–91, 96 L.Ed.3d 119 (1987).[3] The first two steps involve threshold determinations that the claimant is not presently working, and has an impairment which is of the required duration and which significantly limits his ability to work. See 20 CFR 416.920(a) through (c) (1989). In the third step, the medical evidence of the claimant's impairment is compared to a list of impairments presumed severe enough to preclude any gainful work. See 20 CFR pt. 404, subpt. P, app. 1 (pt. A) (1989). If the claimant's impairment matches or is "equal" to one of the listed impairments, he qualifies for benefits without further inquiry. Section 416.920(d). If the claimant cannot qualify under the listings, the analysis proceeds to the fourth and fifth steps. At these steps, the inquiry is whether the claimant can do his own past work or any other work that exists in the national economy, in view of his age, education, and work experience. If the claimant cannot do his past work or other work, he qualifies for benefits. Section 416.920(e) and (f).

The Secretary's test for determining whether a *child* claimant is disabled is an abbreviated version of the adult test. A child qualifies for benefits if he "is not doing any substantial gainful activity," § 416.924(a), if his impairment meets the duration requirement, § 416.924(b)(1), and if it matches or is medically equal to a listed impairment, § 416.924(b)(2) and (3). In evaluating a child's claim, both the general listings and a special listing of children's impairments, 20 CFR pt. 404, subpt. P, app. 1 (pt. B), are considered. If a child cannot qualify under these listings, he is denied benefits. There is no further inquiry corresponding to the fourth and fifth steps of the adult test.

II

Respondent Brian Zebley, a child who had been denied SSI benefits, brought a class action in the United States District Court for the Eastern District of Pennsylvania to challenge the child-disability regulations.[4] His complaint alleges that the Secretary

* * * has promulgated regulations and issued instructions * * * whereby children have their entitlement to SSI disability benefits based solely on the grounds that they have a listed impairment or the medical equivalent of a listed impairment * * * in contravention of the Act's requirement that a child be considered disabled 'if he suffers from any medically determinable physical or mental impairment of comparable severity' to that which disables an adult under the program.

Complaint in ED Pa. Civil Action No. 83–3314, ¶ 2. The District Court, on January 10, 1984, certified a class of all persons

* * * who are now, or who in the future will be, entitled to an administrative determination * * * as to whether supplemental security income benefits are payable on account of a child who is disabled, or as to whether such benefits have been improperly denied, or improperly terminated, or should be resumed.

The court in due course granted summary judgment in the Secretary's favor as to the class claims, ruling that the regulations are not "facially invalid or incomplete * * * and permi[t] the award of benefits in conformity with the

[1] Social Security Administration, Office of Disability, Preliminary Staff Report: Childhood Disability Study, p. B–1 (Sept. 20, 1989).

[2] 42 U.S.C. 405(a), made applicable to title XVI by section 1383(d)(1), reads: "The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence * * * in order to establish the right to benefits hereunder."

[3] The regulations implementing the title II disability standard, 42 U.S.C. 423(d), at issue in *Yuckert*, and those implementing the identical title XVI standard, section 1382c(a)(3), at issue in this case, are the same in all relevant respects. Compare 20 CFR § 404.1520–1530 with §§ 416.920–930 (1989).

[4] Respondents Joseph Love and Evelyn Raushi, two children who were denied benefits, are the other two named plaintiffs in this action. All three named plaintiffs' individual claims were eventually remanded to the Secretary by the District Court; only the class claims remain before this Court.

intent of Congress." *Zebley* v. *Heckler*, 642 F.Supp. 220, 222 (1986). The Court of Appeals for the Third Circuit vacated in part that summary judgment. *Zebley ex rel. Zebley* v. *Bowen*, 1855 F.2d 67 (1988). The Third Circuit found the Secretary's regulatory scheme for child disability benefits inconsistent with the statute, because the listings-only approach of the regulations does not account for all impairments of "comparable severity," and denies child claimants the individualized functional assessment that the statutory standard requires and that the Secretary provides to adults. *Id.*, at 69. Although the Court of Appeals recognized that the Secretary's interpretation of the statute is entitled to deference, it rejected the regulations as contrary to clear congressional intent. The court remanded the case to the District Court with the direction that summary judgment be entered in favor of the plaintiff class on the claim that the Secretary must give child claimants an opportunity for individualized assessment of their functional limitations. *Id.*, at 77. We granted certiorari to resolve a conflict among the Circuits as to the validity of the Secretary's approach to child disability.[5]

III

Since the Social Security Act expressly grants the Secretary rulemaking power, see n. 2, *supra*, " 'our review is limited to determining whether the regulations promulgated exceeded the Secretary's statutory authority and whether they are arbitrary and capricious.' " *Bowen* v. *Yuckert*, 482 U.S., at 145, 107 S.Ct., at 2293 (quoting *Heckler* v. *Campbell*, 461 U.S. 458, 466, 103 S.Ct. 1952, 1957, 76 L.Ed.2d 66 (1983)); see *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843–844, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984) ("If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute"). We conclude, however, that the Secretary's child-disability regulations cannot be reconciled with the statute they purport to implement.

The statute generally defines "disability" in terms of an individualized, functional inquiry into the effect of medical problems on a person's ability to work. *Yuckert*, 482 U.S., at 146, 107 S.Ct., at 2293 (Social Security Act adopts "functional approach"); *Campbell*, 461 U.S., at 459–460, 467, 103 S.Ct., at 1953, 1957 (Act "defines 'disability' in terms of the effect a physical or mental impairment has on a person's ability to function in the workplace"; "statutory scheme contemplates that disability hearings will be individualized determinations").

The statutory standard for child disability is explicitly linked to this functional, individualized standard for adult disability. A child is considered to be disabled "if he suffers from any * * * impairment of comparable severity" to one that would render an adult "unable to engage in any substantial gainful activity." 42 U.S.C. 1382c(a)(3)(A). The next paragraph of the statute elaborates on the adult disability standard, providing that an adult is considered unable to engage in substantial gainful activity, and is therefore disabled, if he is unable to do either his own past work or other work. Section 1382c(a)(3)(B). In plain words, the two provisions together mean that a child is entitled to benefits if his impairment is as severe as one that would prevent an adult from working.

The question presented is whether the Secretary's method of determining child disability conforms to this statutory standard. Respondents argue, and the Third Circuit agreed, that it does not, because the regulatory requirement that a child claimant's impairment must match or be equivalent to a listed impairment denies benefits to those children whose impairments are severe and disabling even though the impairments are not listed and cannot meaningfully be compared with the listings. The Secretary concedes that his listings do not cover every impairment that could qualify a child for benefits under the statutory standard, but insists that the listings, together with the equivalence determination, see 20 CFR 416.924(b)(3), are sufficient to carry out the statutory mandate that children with impairments of "comparable severity" shall be considered disabled. To decide this question, we must take a closer look at the regulations at issue.

IV

The listings set out at 20 CFR pt. 404, subpt. P, app. I (pt. A), are descriptions of various physical and mental illnesses and abnormalities, most of which are categorized by the body system they affect.[6] Each impairment is defined in terms of several specific medical signs, symptoms, or laboratory test results.[7] For a claimant to show that his impairment matches a listing, it must meet all of the specified medical criteria. An impairment that manifests only some of those criteria, no matter how severely, does not qualify.[8] See Social Security Ruling (SSR) 83–19,[9] West's Social Security Reporting Service (Rulings Supp. Pamph. 1988) 90, 91–92 ("An impairment 'meets' a listed condition * * * only when it manifests the specific findings described in the set of medical criteria for that listed impairment * * *. The level of severity in any particular listing section is depicted by the given set of findings and not by the degree of severity of any single medical finding—no matter to what extent that finding may exceed the listed value") (emphasis in original).

For a claimant to qualify for benefits by showing that his unlisted impairment, or combination of impairments, is

[5] The First and Eleventh Circuits have upheld the validity of the Secretary's approach to child disability. *Hinckley ex rel. Martin* v. *Secretary of Health and Human Services*, 742 F.2d 19 (CA1 1984); *Powell ex rel. Powell* v. *Schweiker*, 688 F.2d 1357 (CA11 1982). Also, the Fifth and Eighth Circuits have ruled that the Secretary properly applied the child-disability regulations to deny benefits in a particular case, without explicitly addressing the question whether the regulations are valid. *Nash ex rel. Alexander* v. *Bowen*, 882 F.2d 1291 (CA8 1989); *Burnside ex rel. Burnside* v. *Bowen*, 845 F.2d 587 (CA5 1988). The Third Circuit in the present case acknowledged the conflict. *Zebley ex rel. Zebley* v. *Bowen*, 855 F.2d 67, 75 (1988).

[6] There are 125 impairments defined in the adult listings, and an additional 57 in the child listings. The body system categories in the adult listings are: musculoskeletal, special senses and speech, respiratory, cardiovascular, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine. In addition, there are four groups of listings not categorized by body system: multiple body system impairments, neurological impairments, mental disorders, and malignant neoplastic diseases. The child disability listings include, in addition to all these, a category for growth impairment.

[7] For example, under the "growth impairment" category of the child disability listings, 20 CFR pt. 404, subpt. P, app. I (pt. B) § 100.00 et seq., there is a listing the medical criteria of which require the claimant to show both a "[f]all of greater than 25 percentiles in height which is sustained" and "[b]one age greater than two standard deviations * * * below the mean for chronological age." Section 100.03. Another example is the listing for "mental retardation," which requires that a child claimant show "[a]chievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age," or "IQ of 59 or less," or "IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression." Section 112.05.

[8] For example, in the growth impairment listing described in n. 7, supra, a child claimant whose "bone age" was slightly less than two standard deviations below normal would not qualify under the listing, even if his height was much more than 25 percentiles below normal.

[9] Social Security Rulings are agency rulings "published under the authority of the Commissioner of Social Security and are binding on all components of the Administration." 20 CFR 422.408 (1989); see *Heckler* v. *Edwards*, 465 U.S. 870, 873, n. 3, 104 S.Ct. 1532, 1534, n. 3, 79 L.Ed.2d 878 (1984).

"equivalent" to a listed impairment, he must present medical findings equal in severity to all the criteria for the one most similar listed impairment.[10] 20 CFR 416.926(a) (a claimant's impairment is "equivalent" to a listed impairment "if the medical findings are at least equal in severity" to the medical criteria for "the listed impairment most like [the claimant's] impairment"); SSR 83–19, at 92 (a claimant's impairment is "equivalent" to a listing only if his symptoms, signs, and laboratory findings are "at least equivalent in severity to" the criteria for "the listed impairment most like the individual's impairment(s)"; when a person has a combination of impairments, "the medical findings of the combined impairments will be compared to the findings of the listed impairment most similar to the individual's most severe impairment").[11] A claimant cannot qualify for benefits under the "equivalence" step by showing that the overall functional impact of his unlisted impairment or combination of impairments is as severe as that of a listed impairment. SSR 83–19, at 92–93 ("it is incorrect to consider whether the listing is equaled on the basis of an assessment of overall functional impairment * * *. The functional consequences of the impairments * * * irrespective of their nature or extent, cannot justify a determination of equivalence") (emphases in original).

The Secretary explicitly has set the medical criteria defining the listed impairments at a higher level of severity than the statutory standard. The listings define impairments that would prevent an adult, regardless of his age, education, or work experience, from performing any gainful activity, not just "substantial gainful activity." See 20 CFR 416.925(a) (purpose of listings is to describe impairments "severe enough to prevent a person from doing any gainful activity"); SSR 83–19, at 91 (listings define "medical conditions which ordinarily prevent an individual from engaging in any gainful activity"). The reason for this difference between the listings' level of severity and the statutory standard is that, for adults, the listings were designed to operate as a presumption of disability that makes further inquiry unnecessary. That is, if an adult is not actually working and his impairment matches or is equivalent to a listed impairment, he is presumed unable to work, and is awarded benefits without a determination whether he actually can perform his own prior work or other work. See *Yuckert*, 482 U.S., at 141, 107 S.Ct., at 2291 (if an adult's impairment "meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled. If the impairment is not one that is conclusively presumed to be disabling, the evaluation proceeds to the fourth step"; the listings "streamlin[e] the decision process by identifying those claimants whose medical impairments are so severe that it is likely they would be found disabled regardless of their vocational background," *id*, at 153, 107 S.Ct., at 2297); *Bowen* v. *City of New York*, 476 U.S. 467, 471, 106 S.Ct. 2022, 2025, 90 L.Ed.2d 462 (1986) ("If a claimant's condition meets or equals the listed impairments, he is conclusively presumed to be disabled and entitled to benefits"; if not, "the process moves to the fourth step"); *Campbell* 461 U.S., at 460 103 S.Ct., at 1953 ("The regulations recognize that certain impairments are so severe that they prevent a person from pursuing any gainful work * * *. A claimant who establishes that he suffers from one of these impairments will be considered disabled without further inquiry * * *. If a claimant suffers from a less severe impairment, the Secretary must determine whether the claimant retains the ability to [work]").

When the Secretary developed the child-disability listings, he set their medical criteria at the same level of severity as that of the adult listings. See 42 Fed. Reg. 14705 (1977) (the child-disability listings describe impairments "of 'comparable severity' to the adult listing"); SSA Disability Insurance Letter No. III–11 [12] (Jan. 9, 1974), App. 97 (child-disability listings describe impairments that affect children "to the same extent as * * * the impairments listed in the adult criteria" affect adults' ability to work).

Thus, the listings in several ways are more restrictive than the statutory standard. First, the listings obviously do not cover all illnesses and abnormalities that actually can be disabling. The Secretary himself has characterized the adult listing as merely containing "over 100 *examples* of medical conditions which ordinarily prevent" a person from working, and has recognized that "it is difficult to include in the listing all the sets of medical findings which describe impairments severe enough to prevent any gainful work." SSR 83–19, at 91 (emphasis added). See also 50 Fed. Reg. 50068, 50069 (1985) (listings contain only the most "frequently diagnosed" impairments); 44 Fed. Reg. 18170, 18175 (1979) ("The Listing criteria are intended to identify the more commonly occurring impairments"). Similarly, when the Secretary published the child-disability listings for comment in 1977, he described them as including only the "more common impairments" affecting children. 42 Fed. Reg. 14706 (the child-disability listings "provide a means to efficiently and equitably evaluate the more common impairments").[13]

Second, even those medical conditions that are covered in the listings are defined by criteria setting a higher level of severity than the statutory standard, so they exclude claimants who have listed impairments in a form severe enough to preclude *substantial* gainful activity, but not quite severe enough to meet the listings level—that which would preclude any gainful activity. Third, the listings also exclude any claimant whose impairment would not prevent any and all persons from doing any kind of work, but which actually precludes the particular claimant from working, given its actual effects on him—such as pain, consequences of medication, and other symptoms that vary greatly with the individual [14]—and given the claimant's age, education, and work experience. Fourth, the equivalence analysis excludes claimants who have unlisted impairments, or combinations of impairments, that do not fulfill all the criteria for any one listed impairment.

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[10] For example, a child claimant with Down syndrome (which currently is not a listed impairment), a congenital disorder usually manifested by mental retardation, skeletal deformity and cardiovascular and digestive problems, would have to fulfill the criteria for whichever single listing his condition most resembled. See Brief for National Easter Seal Society, *et al*, as *Amici Curiae* 17, n. 9.

[11] For example, if a child has both a growth impairment slightly less severe than required by listing § 100.03, and is mentally retarded but has an IQ just above the cut-off level set by § 112.04, he cannot qualify for benefits under the "equivalence" analysis—no matter how devastating the combined impact of mental retardation and impaired physical growth.

[12] A Disability Insurance Letter (DIL) is an internal directive sent by the Secretary to the state agencies responsible for disability determinations. See Brief for Petitioner 36.

[13] There are, as yet, no specific listings for many well-known childhood impairments, including spina bifida, Down syndrome, muscular dystrophy, autism, AIDS, infant drug dependency, and fetal alcohol syndrome. See Brief for American Medical Association, *et al, as Amici Curiae* (AMA Brief) 22. The Secretary, however, has proposed new listings for "Down syndrome and other Hereditary, Congenital, and Acquired Disorders." 52 Fed. Reg. 37161 (1987). See Reply Brief for Petitioner 19, n. 16.

[14] The Secretary has stated that the severity of perceived symptoms such as pain has no bearing on the determination whether a claimant's impairment meets or equals a listing. Social Security Ruling 82–58, DHHS Rulings, Cumulative Edition 1982, p. 121 ("No alleged or reported intensity of the symptoms can be substituted to elevate impairment severity to equivalency * * *. [C]omplaints of 'severe,' 'extreme,' or 'constant' pain will not compensate for * * * missing medical findings and permit an 'equals' determination") (emphasis deleted).

Thus, there are several obvious categories of claimants who would not qualify under the listings, but who nonetheless would meet the statutory standard.

For *adults*, these shortcomings of the listings are remedied at the final, vocational steps of the Secretary's test. A claimant who does not qualify for benefits under the listings, for any of the reasons described above, still has the opportunity to show that his impairment in fact prevents him from working. 20 CFR 416.920 (e) and (f); *Yuckert*, 482 U.S., at 141, 107 S.Ct., at 2291 (if an adult claimant's "impairment is not one that is conclusively presumed to be disabling, the evaluation proceeds" to the fourth and fifth steps); *Campbell*, 461 U.S., at 460, 103 S.Ct., at 1953 ("If a claimant suffers from a less severe impairment" than the listed impairments, "the Secretary must determine whether the claimant retains the ability to perform either his former work or some less demanding employment").[15]

For children, however, there is no similar opportunity. Children whose impairments are not quite severe enough to rise to the presumptively disabling level set by the listings; children with impairments that might not disable any and all children, but which actually disable *them*, due to symptomatic effects such as pain, nausea, side effects of medication, etc., or due to their particular age, educational background, and circumstances; and children with unlisted impairments or combinations of impairments [16] that are not equivalent to any one listing—all these categories of child claimants are simply denied benefits, even if their impairments are of "comparable severity" to ones that would actually (though not presumptively) render an adult disabled.[17]

The child-disability regulations are simply inconsistent with the statutory standard of "comparable severity." [18] This inconsistency is aptly illustrated by the fact that the Secretary applies the same approach to child-disability determinations under title XVI and to widow's and widowers' disability benefits under title II, despite the fact that title II sets a stricter standard for widows' benefits. Under the Secretary's regulations and rulings both widows and children qualify for benefits *only* if the medical evidence of their impairments meets or equals a listing. SSR 83–19, at 94. Title II provides: "A widow * * * or widow shall not be determined to be under a disability * * * unless him or her * * * impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity," 42 U.S.C. 423(d)(2)(B). When Congress set out to provide disabled children with benefits, it chose to link the disability standard *not* to this test, but instead to the more liberal test set forth in section 423(d)(2)(A) and in section 1382c(a)(3)(A) (any impairment making a claimant "unable to engage in any substantial gainful activity" qualifies him for benefits). The Secretary's regulations, treating child-disability claims like claims for widows' benefits nullify this congressional choice. See *Yuckert*, 482 U.S., at 163–164, 107 S.Ct., at 2302–03 (dissenting opinion) (contrasting widows' disability statute with the section 423(d)(2)(A)/§ 1382(a)(3) test, which requires an individualized inquiry as to whether the claimant can work); S.Rep. No. 744, 90th Cong., 1st Sess., 49 (1967), U.S. Code Cong. & Admin. News 1967, pp. 2834, 2883 (disabled windows' statutory "test of disability * * * is somewhat more restrictive than that for disabled workers") [19]

The DILs are ambiguous as to the scope of the child disability determination. The 1973 DIL says that "childhood disability will be determined solely in consideration of medical factors," but it also says that "disability in children must be defined in terms of the primary activity in which they engage, namely growth and development," and that "[d]escriptions of a child's activities, behavioral adjustment, and school achievement may be considered in relationship to the overall medical history regarding severity of the impairment." SSA Disability Insurance Letter No. III–11 (1973), App. 90–91. The 1974 DIL does reflect the listings-only approach, but its discussion of the "equivalence" determination suggests a broader inquiry than the Secretary's present rules allow. SSA Disability Insurance Letter No. III–11, Supp. 1 (1974), App. 97 (" 'medical equivalency' concept * * * takes into account the particular effect of disease processes in childhood"; when used to

[15] About 25% of adult claimants qualify for benefits under steps four and five of the Secretary's test. House Committee on Ways and Means, Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means, 1989 Ed., 101st Cong., 1st Sess., 46 (Comm.Print).

[16] As the dissent points out, post, at 899–900, 42 U.S.C. 1382c(a)(3)(F) requires that "the combined impact of [multiple] impairments shall be considered throughout the disability determination process," and 20 CFR 416.923 promises that "we will consider the combined effect of all your impairments." This assurance may be of value to adult claimants, but not to children, for whom the combined effect of multiple impairments is considered *only* within the confines of the equivalence determination, "whether the combination of your impairments is medically equal to *any listed impairment*." 20 CFR 416.926(a). As the Court of Appeals noted, *if* children are afforded the individualized consideration given to adults, *then* § 416.923 would fulfill the statutory mandate as to children with multiple impairments. 855 F.2d, at 76.

[17] Empirical evidence suggests that the rigidity of the Secretary's listings-only approach has a severe impact on child claimants. There are many rare childhood diseases that cannot meaningfully be compared with any of the listings. AMA Brief 6, 25 (it is unlikely "that any physician could make meaningful comparisons between extremely rare diseases and the set medical criteria listed by the Secretary"). Moreover, the listings-only approach disregards factors such as pain, side effects of medication, feeding problems, dependence on medical equipment, confinement at home, and frequent hospitalization, that vary with each individual case. A recent study suggests that children with multiple impairments, young children who cannot be subjected to the clinical tests required by the listings criteria, and children whose impairments have a severe functional impact but which do not match listings criteria, are often denied benefits. H. Fox & A. Greaney, Disabled Children's Access to Supplemental Security Income and Medicaid Benefits (1988).

A telling example of the effect on the listings-only approach is found in *Wilkinson ex rel. Wilkinson* v. *Bowen*, 647 F.2d 660 (CA11 1987) (child with rare liver disorder causing severe swelling, food allergies and fever, and requiring constant care and confinement at home, does not qualify for benefits because his impairment does not meet or equal the criteria for any listing); see also *Zebley ex rel. Zebley* v. *Bowen*, 855 F.2d 67 (CA3 1988) (plaintiff Zebley denied benefits, despite evidence of congenital brain damage, mental retardation, development delay, eye problems and musculoskeletal impairment, because his condition did not meet or equal any listing).

The disparity in the Secretary's treatment of child and adult claimants is thrown into sharp relief in cases where an unsuccessful child claimant, upon reaching age 18, is awarded benefits on the basis of the *same* impairment deemed insufficient to qualify him for child disability benefits. See, *e.g.*, *Wills* v. *Secretary of Health and Human Services*, 686 F.Supp. 171, 172, and n. 1 (WD Mich.1987); Brief of National Organization of Social Security Claimants' Representatives as *Amicur Curiae*, A–3 to A–24 (ALJ decisions awarding benefits when child claimant turns 18). See also Tr. of Oral Arg. 13–14.

[18] The dissent proposes that children who fail to qualify for benefits under the Secretary's current approach can simply "make their case before the Secretary, and take the case to court if their claims are rejected." *Post*, at 898–899. We fail to see why each child denied benefits because his impairment falls within the several categories of impairments that meet the statutory standard but do not qualify under the Secretary's listings-only approach, should be compelled to raise a separate, as-applied challenge to the regulations, or why a facial challenge is not a proper response to the systemic disparity between the statutory standard and the Secretary's approach to child disability claims.

[19] The dissent, *post*, at 900, n. 2, appears to accept the Secretary's argument that Congress expressly indicated its approval of his approach to child disability in 1976, when it directed him to "publish criteria" to be employed to determine disability in children's cases. Unemployment Compensation Amendments of 1976, section 501(b), 90 Stat. 2683, 2685 (1976). At that time, however, Congress could not have known the exact contours of the Secretary's approach. Congress had before it only the Secretary's 1973 and 1974 DILs and accompanying "medical guides" that eventually became the child-disability listings, and the proposed regulations published for comment at 39 Fed. Reg. 1624 (1974).

evaluate multiple impairments, "[e]ach impairment must have some substantial adverse effect on the child's major daily activities, and together must 'equal' the specified impact"). Congress could no have guessed that these early directives would evolve into the present regulatory scheme.

Similarly, the 1974 proposed regulations provide that a child with an unlisted impairment qualifies for benefits if his impairment is "determined * * * with appropriate consideration of the particular effect of disease processes in childhood, to be medically the equivalent of a listed impairment." 39 Fed. Reg. at 1626. The regulation defining "medical equivalence" says only that an impairment is equivalent to a listed one "only if the medical findings with respect there-to are at least equivalent in severity and duration to the listing findings of the listed impairment." *Id.*; cf. 20 CFR 416.926 (1989) (current definition of equivalence, requiring claimant to meet all criteria for the one most similar listed impairment). Thus, the proposed regulations gave little warning of the Secretary's current, strictly limited equivalence analysis. At least until SSR 83-19 was promulgated in 1983, it did not become clear that the listings criteria would be applied so rigidly, and that proof of equivalence would require a strict matching of the criteria for the single most similar listed impairment.

The 1976 directive to publish criteria therefore has little bearing on the question whether the Secretary's present approach to child disability is consistent with the statute.

## V

The Secretary does not seriously dispute the disparity in his approach to child and adult-disability determinations. He argues, instead, that the listings-only approach is the only practicable way to determine whether a child's impairment is "comparable" to one that would disable an adult. An individualized, functional approach to child-disability claims like that provided for adults is not feasible, the Secretary asserts, since children do not work; there is no available measure of their functional abilities analogous to an adult's ability to work, so the only way to measure "comparable severity" is to compare child claimants' medical evidence with the standard of severity set by the listings. Laying to one side the obvious point that such a comparison does not properly implement the statute because the Secretary's current listings set a level of severity higher than that prescribed by the statute, this argument still is not persuasive. Even if the listings were set at the same level of severity as the statute, and expanded to cover many more childhood impairments, *no* set of listings could ensure that child claimants would receive benefits whenever their impairments are of "comparable severity" to ones that would qualify an adult for benefits under the individualized, functional analysis contemplated by the statute and provided to adults by the Secretary. No decision process restricted to comparing claimants' medical evidence to a fixed, finite set of medical criteria can respond adequately to the infinite variety of medical conditions and combinations thereof, the varying impact of such conditions due to the claimant's individual characteristics, and the constant evolution of medical diagnostic techniques.

The Secretary's claim that a functional analysis of child disability claims is not feasible is unconvincing. The fact that a *vocational* analysis is inapplicable to children does not mean that a *functional* analysis cannot be applied to them. An inquiry into the impact of an impairment on the normal daily activities of a child of the claimant's age—speaking, walking, washing, dressing, and feeding oneself, going to school, playing, etc.—is, in our view, no more amorphous or unmanageable than an inquiry into the impact of an adult's impairment on his ability to perform "any other kind of substantial gainful work which exists in the national economy," section 1382c(a)(3)(B).[20] Moreover, the Secretary tacitly acknowledges that functional assessment of child claimants is possible, in that some of his own listings are defined in terms of functional criteria. See, *e.g.*, 20 CFR pt. 404, subpt. P, App. I (pt. B), § 101.03 (listing for "Deficit of musculoskeletal function" defined in terms of difficulty in walking or "[i]nability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene"); § 111.02(B) (listing for "Major motor seizures" defined in terms of "Significant interference with communication" or "Significant emotional disorder," or "Where significant adverse effects of medication interfere with major daily activities"); § 112.05(C) (mental retardation listing for claimants with IQ of 60–69 requiring "a physical or other mental impairment imposing additional and significant restriction of function or developmental progression").[21] Also, the Secretary's own test for cessation of disability involves an examination of a child claimant's ability to "perform age-appropriate activities." 20 CFR 416.994(c). Finally, the Secretary's insistence that child claimants must be assessed from "a medical perspective alone, without individualized consideration of * * * residual functional capacity," Brief for Petitioner 45, seems to us to make little sense in light of the fact that standard medical diagnostic techniques often include assessment of the functional impact of the disorder.[22]

## VI

We conclude that the Secretary's regulations and rulings implementing the child-disability statute simply do not carry out the statutory requirement that SSI benefits shall be provided to children with "any * * * impairment of comparable severity" to an impairment that would make an adult "unable to engage in any substantial gainful activity." Section 1382c(a)(3)(A). For that reason, the Secretary's approach to child disability is "manifestly contrary to the statute," *Chevron*, 467 U.S., at 844, 104 S. Ct., at 2782, and exceeds his statutory authority.

The judgment of the Court of Appeals, vacating in part the District Court's grant of summary judgment in the Secretary's favor as to the claims of the plaintiff class, is affirmed.

*It is so ordered.*

Justice Blackmun delivered the opinion of the Court, in which Justices Brennan, Marshall, Stevens, O'Connor, Scalia, and Kennedy joined. Justice White filed a dissenting opinion, in which Chief Justice Rehnquist joined.

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[20] The Secretary's own regulations state that this inquiry involves assessment of an adult claimant's ability to "do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling," and his ability "to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting." 20 CFR 416.945 (b) and (c) (1989). It is difficult to see why such functional assessment would be feasible for adults and not for children.

[21] The Secretary contends that, because some of the child-disability listings include functional criteria, his approach to child disability adequately takes account of functional considerations. Brief for Petitioner 42. This argument is unavailing. The fact that some of the listed impairments are defined in terms of functional criteria is small comfort to child claimants who do not have one of those impairments, and who fail to qualify for benefits for one of the reasons discussed above.

[22] See AMA Brief 5 ("The view that proper study or treatment of pediatric illness and injury must include an assessment of the child's functional capacity to perform age-appropriate activities is well accepted in the medical community * * *. The biological severity of an illness is an abstraction, measured only by proxies, the most familiar of which are physiological severity, functional severity and burden of illness").

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing-Federal Housing Commissioner

**[Docket Nos. N-91-3231; FR-2986-C-02, N-91-3232; FR-2987-C-02, and N-91-3267; FR-3068-C-02]**

### Supportive Housing for the Elderly

In the matter of Fund Availability (NOFA) for Supportive Housing for the Elderly; Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities; and Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities—Set-aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus, Notices of Fund Availability for FY 91; Corrections.

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

**ACTION:** Notices of fund availability for FY 91; Extension of deadline for receipt of applications; Corrections.

**SUMMARY:** On June 12, 1991, the Department published a NOFA (56 FR 27126) for Supportive Housing for the Elderly, a NOFA for Supportive Housing for Persons with Disabilities (56 FR 27093), and a NOFA for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus (56 FR 27138). Based upon information from the Field Offices conducting workshops and comments from participants, the Department has decided to extend the deadline for receipt of applications in response to these NOFAs. All applications in response to these NOFAs must be received by September 30, 1991.

In previous Section 202 NOFAs (*e.g.*, 55 FR 14062, 14065, April 13, 1990), the Department has had a minimum project size limitation in metropolitan areas. In the Invitation for Applications for Section 202 Supportive Housing for the Elderly Fund Reservation for this year (HUD Handbook 4571.3, Supportive Housing for the Elderly, Appendix 10; and HUD Notice 91-45, Appendix 4), a 40-unit minimum project size limitation is stated. The Department failed to place this minimum limitation in the interim rule for Supportive Housing for the Elderly (also being corrected in today's **Federal Register**) or the NOFA for Supportive Housing for the Elderly. This notice also corrects the NOFA for Supportive Housing for the Elderly to provide notice of this limitation for FY 1991 applicants. This limitation is also being publicized by the Field Offices at their workshops and is contained in the application package.

**DATES:** The deadline date for receipt of applications in response to the Notices of Fund Availability (NOFAs) for Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, and Supportive Housing for Persons with Disabilities—Set-aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus is extended to September 30, 1991.

**FOR FURTHER INFORMATION CONTACT:** Robert Wilden, Director, Housing for the Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202) 708-2730. (This is not a toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (This is not a toll-free number).

Accordingly, FR Doc. 91-13636, Fund Availability (NOFA) for Supportive Housing for the Elderly; FR Doc. 91-13638, Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities; and FR Doc. 91-13888, Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus, published in the **Federal Register** of June 12, 1991, at 56 FR 27126, 27093, and 27138, respectively, are corrected to read as follows:

1. On page 27126, in FR Doc. 91-13636, the Fund Availability (NOFA) for Supportive Housing for the Elderly, is amended by correcting the DATE section to read as follows:

**DATES:** The deadline date for receipt of applications in response to this NOFA is September 30, 1991.

2. On page 27128, in FR Doc. 91-13636, in the second column, under item I, the following sentence is added at the end of the paragraph entitled, *C. Eligibility*, to read as follows:

*C. Eligibility*

* * * * *

Reservations for projects intended for the elderly in metropolitan areas will not be approved for less than 40 units.

3. On page 27093, in FR Doc. 91-13638, the Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities, is amended by correcting the DATE section to read as follows:

**DATES:** The deadline date for receipt of applications in response to this NOFA is September 30, 1991.

4. On page 27138, in FR Doc. 91-13888, the Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities—Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus, is amended by correcting the DATE section to read as follows:

**DATES:** The deadline date for receipt of applications in response to this NOFA is September 30, 1991.

Dated: July 25, 1991.

**Grady J. Norris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 91-18292 Filed 7-31-91; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Privacy Act of 1974—Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise three notices describing records maintained by the U.S. Geological Survey. Except as noted below, all changes are editorial in nature, clarify and update existing statements, and reflect organization, address, and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The three notices being revised, which are published in their entirety below, are:

1. National Research Council Grants Program—Interior, USGS-9 (previously published on September 7, 1990; 55 FR 36906).

2. Personnel Investigations Records—Interior, USGS-23 (previously published on October 30, 1990; 55 FR 45660).

3. Water Data Sources Directory—Interior, USGS-25 (previously published on January 7, 1982; 47 FR 868).

In one notice (USGS-9), the existing system manager(s) and address statement is revised to reflect the correct title of the system manager. In one notice (USGS-23), the existing storage, retrievability and safeguards statements are revised to accurately reflect the manner in which the records are maintained and retrieved. In one notice (USGS-25), the existing routine use statement is revised to accurately reflect the release of information for law enforcement and litigation purposes. In this notice the existing safeguards, retention and disposal, and record access procedures statements are

revised to accurately reflect the manner in which the records are maintained, accessed and disposed.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective upon publication in the **Federal Register** (August 1, 1991). Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: July 17, 1991.

**Janet L. Bishop,**

*Acting Director, Office of Management Improvement.*

**INTERIOR/USGS-9**

**SYSTEM NAME:**

National Research Council Grants Program—Interior, USGS–9.

**SYSTEM LOCATION:**

Office of the Chief Geologist, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, Virginia 22092.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals assigned to U.S. Geological Survey who are considered for grants made through the National Research Council.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains name, address, social security number, date of birth, and marital status of individuals considered for a grant. Records included are: The SF 171 (Application for Federal Employment) for each individual; research proposal; internal memoranda; correspondence between the National Research Council and the applicant; travel requests, if appropriate; and documentation for renewal of assignment, if applicable.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

43 U.S.C. 31 et seq., 5 U.S.C. 3101

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary use of the records is to evaluate individuals being considered for grants made through the National Research Council. Disclosures outside the Department of the Interior may be made to: (1) The National Research Council for evaluation purposes; (2) The U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) Disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) A congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) A Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; and (6) Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant or other benefit.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Manual system maintained in files showing data on Research Associates assigned to the Geological Survey under this program.

**RETRIEVABILITY:**

Indexed by name:

**SAFEGUARDS:**

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

**RETENTION AND DISPOSAL:**

Records are disposed of periodically as prescribed under Bureau Records Disposition Schedule RCS/Item 802–06b and 802–07.

**SYSTEM MANAGER(S) AND ADDRESS:**

Human Resources Officer, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, Virginia 22092.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Under the specific exemption authority of 5 U.S.C. 552a(k)(5), the Department of the Interior has adopted a regulation (43 CFR 2.79(c)(2)) which exempts this system from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) to the extent that the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for federal civilian employment. The reasons for adoption of this regulation are set out at 40 FR 37217 (August 26, 1975).

**INTERIOR/USGS-23**

**SYSTEM NAME:**

Personnel Investigations Records—Interior, USGS–23.

**SYSTEM LOCATION:**

Security Office, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 250, Reston, VA 22092.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

1. Current Geological Survey employees who (a) are granted access to classified information; (b) are filling sensitive positions not requiring access to classified information; (c) are being considered either for access to classified information or for filling sensitive positions not requiring access to classified information; and (d) are found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

2. Former Geological Survey employees who (a) were granted access to classified information; (b) were filling sensitive positions not requiring access to classified information; and (c) were found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with or from law enforcement agencies, employers, and educational institutions attended; foreign affiliations which may affect his or her loyalty to the United States; and other information developed from the above.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 10450, as amended.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The contents of these records and files may be disclosed and used as follows: (1) To designated officials, officers, and employees of the USGS, DOI, OPM, DOE, CIA, FBI, and all other agencies and departments of the Federal Government who in the performance of their duties have an interest in the individual for employment purposes, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States Government; (2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) To disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; and, (4) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All investigative records are maintained in file folders stored in file cabinets. An automated index system of all records is on a stand-alone computer.

**RETRIEVABILITY:**

All records are indexed by surname in alphabetical order. The automated index system is indexed by surname or social security number.

**SAFEGUARDS:**

The filing cabinets and the stand-alone computer are safeguarded in a secure, windowless office with one doorway which is secured by a key locking device using an off-master key system. Access to all keys is under stringent security controls. The automated index system of all records is further protected by a password and privacy act warning.

**RETENTION AND DISPOSAL:**

(a) OPM background investigative files supporting secret-sensitive decompartmented information and top secret-infrequent access to sensitive compartmented information are retained until the awarded security clearance or employment is terminated. All other OPM investigative files are routinely destroyed within 90 days after receipt or upon completion of the adjudication action, whichever occurs last. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15b.

(b) All information, supplementing the above OPM investigative files originated by the Geological Survey, is retained for five years following termination of awarded security clearance or employment, whichever occurs first, and is then destroyed. Disposition of files if made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15a.

**SYSTEM MANAGER(S) AND ADDRESS:**

Security Officer/Alternate Security Officer, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 250, Reston, Virginia 22092.

**NOTIFICATION PROCEDURE:**

Written inquiries to the System Manager are required and must include the following information in order to positively identify the individual whose records are requested: (1) Full name, (2) Date of birth, (3) Place of birth, (4) Any available information regarding the type of record requested. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURE:**

An individual can obtain information on the procedures for gaining access to and contesting the records from the above System Manager. See 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

Same as above. See 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Information contained in this system is obtained from the following categories of sources: (1) Applications and other personnel and security forms furnished by the individual, (2) Results of investigations and other material furnished by Federal agencies.

**INTERIOR/USGS–25**

**SYSTEM NAME:**

Water Data Sources Directory—Interior, USGS–25

**SYSTEM LOCATION:**

(1) National Water Data Exchange (NAWDEX), Water Resources Division, U.S. Geological Survey, National Center, Mail Stop 421, Reston, VA 22092. (2) NAWDEX Assistance Centers (for addresses contact the System Manager).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who are sources of water or water-related data and services and to whom requesters can be referred to obtain water data held or services provided by them.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains name, address, and telephone number of individuals who are sources of water or water-related data or information and other water-related services.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Water Data Sources Directory is maintained under the authority of 43 U.S.C. 31 (28 Stat. 398), OMB Cir. A–67, and 5 U.S.C. 301.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary uses of these records are for reference by (1) Geological Survey and Geological Survey contractor personnel in processing requests for water or water-related data, (2) Personnel of Local Assistance Centers listed in Appendix A of the National Water Data Exchange (NAWDEX) including Geological Survey personnel and personnel of state-governmental, local-governmental, other public, and private organizations serving as NAWDEX Local Assistance Centers in processing requests for water or water-related data, and (3) Users of NAWDEX including Federal, state-governmental, local-governmental, other public, and private organizations and private citizens in identifying sources of water and water-related data or services and transmitting requests for the acquisition of desired data or services. Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the

Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled, or (2) To disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in computerized form on magnetic disks or magnetic tape, printed lists, and a published directory available for public dissemination.

**RETRIEVABILITY:**

Retrievable by name, a unique identifier, geographical identifiers, and types of data or services available from the individual.

**SAFEGUARDS:**

Only Geological Survey personnel of the NAWDEX Program Office have access to the original data files.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of according to the Bureau Records Disposition Schedule, RCS/Item 1400–13.

**SYSTEM MANAGER(S) AND ADDRESS:**

Program Manager, National Water Data Exchange, U.S. Geological Survey, National Center, Mail Stop 421, Reston, Virginia 22092.

**NOTIFICATION PROCEDURE:**

Any individual may inquire about information stored on themselves by submitting a written request to the System Manager. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURE:**

The Water Data Sources Directory is designed to be operated on a personal computer. Copies of the Directory may be obtained by written request to the System Manager. See 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment must be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Information stored may be obtained from the individual on whom the record is maintained, organizations, or other individuals, with whom the individual identified in the record is associated, NAWDEX personnel, and NAWDEX-contracted information researchers.

[FR Doc. 91–18261 Filed 7–31–91; 8:45 am]

**BILLING CODE 4310–31–M**

## Bureau of Land Management

**[ID–050–4212–13/7122–08–7558; IDI–27542, IDI–27581, IDI–28095]**

## Management Framework and Resource Management Plan Amendments; Exchange of Public Lands; Idaho

**AGENCY:** Bureau of Land Management [BLM], Interior.

**ACTION:** Notice of Action—Amendment of the Bennett Hills Management Framework Plan (MFP), Sun Valley MFP and Monument Resource Management Plan (RMP)/Notice of Realty Action (NORA), exchange of public land in Camas, Gooding, Lincoln, and Jerome counties, Idaho, for private land in Camas and Custer Counties, Idaho.

**SUMMARY:** The following described land has been examined and through the public supported land use planning process has been determined to be suitable for transfer by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

**Boise Meridian, Idaho**

T. 5 S., R. 13 E., Gooding County,
Sec. 19: E½SW¼, W½SE¼;
Sec. 30: NW¼NE¼, NE¼NW¼.
T. 6 S., R. 15 E., Gooding County,
Sec. 31: Lot 4, W½NE¼, E½W½, SE¼.
T. 7 S., R. 17 E., Jerome County,
Sec. 11: NE¼NE¼, W½NE¼;
Sec. 12: E½, N½NW¼, SE¼NW¼.
T. 7 S., R. 18 E., Jerome County,
Sec. 7: Lots 1,2,3,4.
T. 1 N., R. 15 E., Camas County,
Sec. 21: SW¼SW¼;
Sec. 28: NW¼NW¼.
T. 5 S., R. 17 E., Lincoln County,
Sec. 30: Lot 4;
Sec. 31: Lots 1,2,3,4; S½NE¼, E½NW¼; NE¼SW¼, N½SE¼SW¼, N½SE¼, N½N½S½SE¼, S½NW¼SW¼SE¼;
Sec. 32: S½N½, N½SW¼, N½N½SE¼, N½S½NW¼SE¼, N½SW¼NE¼SE¼;
Sec. 33: SW¼NE¼, S½NW¼, N½NW¼SW¼, N½N½NE¼SW¼, S½NW¼NE¼SW¼, N½N½NW¼SE¼;

Containing 2,499.88 acres.

Non-federal land to be acquired is described as follows:

**Boise Meridian, Idaho**

T. 2 S., R. 15 E., Camas County,
Sec. 14: NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 23: NE¼NE¼, W½E½, E½W½.
T. 2 S., R. 16 E., Camas County,
Sec. 10: E½SW¼, SE¼;
Sec. 11: W½NE¼, E½NW¼, N½SW¼, SW¼SW¼,NW¼SE¼;
Sec. 15: N½NE¼, NE¼NW¼;
T. 10 N., R. 21 E., Custer County,
Sec. 2: S½SW¼;
Sec. 3: NW¼NE¼, S½NE¼, NW¼, NE¼SE¼;
Sec. 4: SE¼NE¼;
T. 11 N., R. 21 E., Custer County,
Sec. 33: SE¼SE¼;
Sec. 34: S½SW¼.

Containing 1,880 acres.

The purpose of this exchange is to acquire the non-federal lands which have high values for public access, riparian and wildlife habitat, and recreation. All these parcels are included in the Wildlife 2000 program as meeting the Director's priorities acquiring land containing these values. Acquisition of the lands would result in a significant net increase in riparian habitat, particularly in live stream mileage; enhance and ensure the integrity of a BLM managed crucial elk winter range; and allow BLM to block up management areas which would provide public access for protection and enjoyment of these resources.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved by adjustment of the acres of public land to be transferred from Federal ownership or a cash payment not to exceed 25 percent of the federal land value.

Land to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A reservation to the United States for rights-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).
2. A reservation to the United States for Power Project Withdrawal 1971 FPC 0 10/30/1961.
3. Subject to rights granted to Edith Faulkner (estate) under right-of-way IDI–4881.
4. Subject to rights granted to Bliss Highway District under right-of-way IDI–22589.
5. Subject to rights granted to Faulkner Land and Livestock under right-of-way IDI–26910.
6. Subject to rights granted to Idaho Department of Transportation under right-of-way IDI–06667.
7. Subject to rights granted to Idaho Department of Transportation under

right-of-way IDI–01619.
8. Subject to rights granted to Mountain States T&T under right-of-way IDI–20981.
9. Subject to rights granted to Gooding Highway District under right-of-way IDI–25378.
10. Subject to rights granted to North Side Canal Co. under right-of-way IDBL–039651.
11. Subject to rights granted to Union Pacific Railroad under right-of-way IDI–962.
12. Subject to rights granted to Idaho Department of Transportation under right-of-way IDI–2902.
13. Subject to rights granted to Mountain States T&T under right-of-way IDI–22249.
14. A reservation to the United States for Power Project Withdrawal 1975, FPC 0 7/18/1960, IDI–26590.
15. Subject to rights granted to Idaho Power Co. under right-of-way IDI–015841.
16. Subject to rights granted to Pacific Power and Light Co. under right-of-way IDI–8875.
17. Subject to rights granted to Idaho Power Co. under right-of-way IDI–13335.
18. Subject to rights granted to Idaho Power Co. under right-of-way IDI–14990.
19. Subject to rights granted to Idaho Power Co. under right-of-way IDI–17351.
20. Subject to rights granted to Idaho Power Co. under right-of-way IDI–14555.
21. Subject to rights granted to Idaho Department of Transportation under right-of-way 08144.

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee, unless the right-of-way is reserved to the United States.

Publication of this Notice segregates the public lands from the operation of the public land laws, including the mining law, for a period of two years from the date of publication.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the conditions of the exchange can be obtained by contacting Shoshone District Realty Specialist Harold Brown at (208) 886–2206.

**PLANNING PROTEST:** Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 C Street NW., Washington, DC 20420, within 30 days of this Notice.

**LAND EXCHANGE COMMENTS:** For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the land exchange to the District Manager, Bureau of Land Management, P.O. Box 2–B, Shoshone, ID 83352. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the land exchange, this realty action will become the final determination of the Department of the Interior and the planning amendment will be in effect.

Dated: July 22, 1991.

**Dennis D. Schulze,**
*Acting District Manager.*

[FR Doc. 91–18177 Filed 7–31–91; 8:45 am]
BILLING CODE 4310–GG–M

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**[NV–050–91–4140–08]**

## Management Framework Plan; Clark Co., NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** "Notice of Change" made by the Director, Bureau of Land Management (BLM), to the Proposed Plan Amendment and Final Environmental Assessment (EA) for the Clark County Management Framework Plan (MFP) for Sand and Gravel Leasing in the Las Vegas Valley Sub-Unit and also a "Notice" of a thirty (30) day public comment period on this change.

**SUMMARY:** The Proposed Plan Amendment and Final EA for the Clark County MFP for Sand and Gravel Leasing in the Las Vegas Valley Sub-Unit, dated November 23, 1988, stipulated that surface owner consent was necessary to mine sand and gravel from two sand and gravel leases. The BLM Director, through administrative review of protests to the Proposed Plan Amendment, determined that surface owner consent will not apply to these leases. Because of this change to the Proposed Amendment and for other reasons, a public review period of thirty (30) days is being conducted.

**DATES:** Public comment on the BLM Director's change to the Proposed Plan Amendment must be postmarked no later than September 6, 1991 or hand delivered to the Las Vegas District Office by the close of business on this same date.

**ADDRESSES:** Public comments are to be sent to the Stateline Resource Area Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Copies of all supporting documents can be reviewed at the Las Vegas District Office at 4765 Vegas Drive, Las Vegas, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Gary Beckman, Stateline Resource Area Geologist, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126, or at the above address, or telephone (702) 647–5000.

**SUPPLEMENTARY INFORMATION:** The Proposed Amendment and Final EA reads, in part, as follows: "Renew, simultaneously and for another five years, all of lease Nev-057863 and only those portions of lease N–35779 where the current lessee owns the surface, or has a written agreement with the surface owner to mine sand and gravel." The BLM Director, by decision letters of July 13, 1990, determined that the BLM will not apply surface owner consent to either of the two leases. Because of this change to the Proposed Amendment, further public notification and a comment period is necessary.

A letter addressing this change and comment period will be sent to all who participated in the sand and gravel amendment planning process. A press release will also be issued.

All written comments received during this public comment period will be reviewed and those pertinent to the surface owner consent issue will be used to prepare a supplement to the Proposed Plan Amendment and Final EA. This supplemental document will then be made available to the public for a final thirty (30) day protest period. Following the resolution of any new protests on the supplemental plan and EA, an Approved Plan Amendment and Record of Decision will be issued and made available to the public.

A limited number of copies of the Proposed Plan Amendment and Final EA and also the Draft Plan Amendment and EA are available at the BLM Las Vegas District Office and also the BLM Nevada State Office at 850 Harvard Way, Reno, Nevada.

Dated: July 25, 1991.

**Billy R. Templeton,**
*State Director, Nevada.*

[FR Doc. 91–18259 Filed 7–31–91; 8:45 am]
BILLING CODE 4310–HC–M

[UT-040-01-4830-12]

## Cedar City Advisory Council; Meeting

Notice is hereby given in accordance with Public Law 92-463, that a Cedar City Advisory Council meeting will be held Tuesday, August 27, 1991. The meeting will begin at 9 a.m. in the BLM Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah. The agenda will include discussion on the Dixie Resource Management Plan, the Kanab/Escalante Resource Management Plan, vegetative land treatments, predator control, and recreation management.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:15 a.m. or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East D.L. Sargent Drive, Cedar City, Utah 84720 by Friday, August 23, 1991. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: July 22, 1991.

**Gordon R. Staker,**

*District Manager.*

[FR Doc. 91-18178 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-01-4410-14]

## Moab District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior..

**ACTION:** Moab District Advisory Council Meeting.

**SUMMARY:** The Moab District Advisory Council meeting that was scheduled for Tuesday and Wednesday, July 16 and 17, 1991, was postponed due to Council members not being able to attend. It has been rescheduled for Thursday and Friday, September 5 and 6, 1991. The business meeting will be held in the Conference Room of the BLM Moab District Office, 82 E. Dogwood, Moab, Utah beginning on the 5th at 10 a.m. and adjourning at 4:30 p.m., followed by a field trip on the 6th.

The agenda for the September 5 business meeting will be an orientation by program leaders and Area Managers for the newly appointed Council members, and election of officers. The orientation will highlight the major program issues in the Divisions of Planning and Environmental Coordination, Lands and Renewable Resources, and Minerals, and in the four Resource Areas. Also on the agenda are new business, opportunity for public comment, finalization of resolutions, and adjournment.

The September 6 field trip will depart from the Moab District Office at 8 a.m. and will include a visit to areas near Moab proposed for oil and gas exploration and related issues concerning recreation, wildlife, environmental concerns, and nearness to State and National Parks. The public is welcome to tour with the group and to attend the business meeting, however, they would need to supply their own transportation and food.

All Advisory Council meetings are open to the public. Persons wishing to make a comment to the Council must notify the BLM by September 3. Depending on the number of people desiring to make a statement, a per-person time limit may be established so that all may be heard. For further information, contact: Mary Plumb, Public Affairs Officer, P.O. Box 970, Moab, Utah 84532. Phone (801) 259-6111.

**Gene Nodine,**

*District Manager.*

[FR Doc. 91-18269 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-040-91-4320-12]

## Rock Springs District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the Rock Springs District Grazing Advisory Board.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Public Law 92-463.

**DATES:** September 18, 1991, 9 a.m. until 5 p.m. and September 19, 1991, 8 a.m. until 12 noon.

**ADDRESSES:** Bureau of Land Management District Office, Highway 191 North, Rock Springs, Wyoming 82901.

**FOR FURTHER INFORMATION CONTACT:** Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include.

1. Introductions and opening remarks.
2. Election of a Chairman and Vice-Chairman.
3. Review of tour and discussion of Sugarloaf AMP development.
4. Cumberland/Uinta AMP development.
5. South LaBarge Common AMP.
6. District rangeland monitoring.
7. Improvements proposed for completion in FY 92 with range betterment (8100) funds.
8. Update on wild horse gathering.
9. Public comment period.

The meeting is open to the public. Transportation is required for the tour part of the meeting. Four-wheel drive vehicles will be needed. Interested persons may make oral statements to the Board between 11:30 a.m. and 12 noon, September 19, 1991, or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, by September 17, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlowe E. Kinch,

*District Manager.*

[FR Doc. 91-18179 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-22-M

## Salt Lake District; Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of grazing advisory board meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92-463 that the Salt Lake District Grazing Advisory Board will be meeting on September 11, 1991. The meeting will begin at 9:30 a.m. at the Salt Lake District, Bureau of Land Management Office, at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to: (1) Review FY 1991 (8100) range improvement accomplishments; (2) Review FY 1991 (7121) range improvement accomplishments; and (3) review proposed range improvement work for the upcoming year (FY 1992).

The meeting is open to the public. Interested persons may make oral statements at the meeting between 10 a.m. and 10:30 a.m., or file a written

statement for the Board's consideration. Those wishing to make statements to the Board are requested to contact Glade Anderson at (801) 977–4300 by September 6th so that adequate time can be included on the agenda.

**Deane H. Zeller,**

*Salt Lake District Manager.*

[FR Doc. 91–18218 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–DQ–M

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**[NM–940–4214–10; NMNM 77962]**

## Expiration of Temporary Segregative Effect and Opening of Land; NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action gives notice of the expiration of the temporary segregative effect as to 2,784.66 acres of public land and 240.00 acres of Federally reserved mineral interests underlying acquired surface estate included in an application for withdrawal for protection of the Carlsbad Project, Fort Sumner Dam and Reservoir.

**EFFECTIVE DATE:** Expiration of temporary segregative effect was effective on March 29, 1991. The land will be open to surface entry and mining on September 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico, 505–988–6071.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 204(b)(1)(c) of the Federal Land Policy and Management Act of 1976, 90 stat. 2751; 43 U.S.C. 1714, the following described land is hereby relieved of the temporary segregative effect of withdrawal application NMNM 77962. The withdrawal application will continue to be processed unless it is cancelled or denied:

New Mexico Principal Meridian

T. 5 N., R. 23 E.,
Sec. 2, lot 4, and SW¼SE¼.
T. 4 N., R. 24 E.,
Sec. 2, lots 1, 2, and 3, E½SW¼ and NW¼SE¼.
T. 5 N., R. 24 E.,
Sec. 17, S½S½;
Sec. 18, NE¼ and N½SE¼;
Sec. 20, NW¼ and SE¼;
Sec. 21, all;
Sec. 26, N½SW¼;
Sec. 27, NE¼SW¼, S½SW¼, and SE¼;
Sec. 28, W½NE¼, SE¼NE¼, and NW¼;
Sec. 29, N½NE¼ and SE¼NE¼;
Sec. 33, NE¼ and E½SE¼;
Sec. 34, E½NE¼, W½, and SE¼SE¼;
Sec. 35, W½NW¼ and SE¼NW¼.

The area described aggregates 3,024.66 acres in Guadalupe and DeBaca Counties.

Dated: July 23, 1991.

**Glibert O. Lockwood,**

*Acting State Director.*

[FR Doc. 91–18258 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–FB–M

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**[AZ 020–01–4212–12; AZA 25507]**

## Realty Action; Exchange of Public Land, Maricopa Co., AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 1 E.,
Sec. 3, lots 16 to 18, incl;
Sec. 12, W½W½SW¼NW¼;
Sec. 23, W½NW¼NW¼SE¼, N½SW¼ NW¼SE¼.
T. 5 N., R. 1 E.,
Sec. 23, N½N½NE¼
Sec. 24, E½NW¼, NW¼NW¼, E½W½ SW¼NW¼,E½SW¼NW¼;
Sec. 27, S½NE¼NE¼SW¼, W½NE¼ SW¼, SE¼NE¼SW¼, W½SW¼, SE¼ SW¼;
Sec. 28, SW¼NE¼;
Sec. 29. E½E½;
Sec. 30. S½NE¼NE¼, SE¼NE¼.
Containing 627.72 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: July 23, 1991.

**Paul J. Buff,**

*Acting District Manager.*

[FR Doc. 91–18252 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–32–M

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**[AZ–020–01–4212–13; AZA–25355]**

## Realty Action; Exchange of Public Land Pima and Pinal Co., AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, Exchange.

**SUMMARY:** The Bureau of Land Management proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. All or part of the following described federal lands may be suitable for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

**Gila and Salt River Base and Meridian, Pima and Pinal Counties, Arizona**

T. 11 S., R. 8 E.,
Secs. 28, 29, 32, 33, 34;
T. 12 S., R. 8 E.,
Secs. 3, 4, 5, 10, 14, 15;
T. 12 S., R. 9 E.,
Secs. 17, 20;
T. 16 S., R. 12 E.,
Sec. 35;
T. 17 S., R. 12 E.,
Secs. 2, 11;
T. 3 S., R. 13 E.,
Sec. 24;
T. 3 S., R. 14 E.,
Secs. 19, 29, 30;
T. 14 S., R. 16 E.,
Sec. 7.
Comprising approximately 5090 acres.

In exchange for the above described public lands, the United States will acquire various parcels of land located in southern and southcentral Arizona from ASARCO, Incorporated. The subject parcels to be acquired from Asarco contain critical habitat for certain threatened or endangered species of plants and animals. The exchange proposal involves all of the exchange proponent's interest in the surface and subsurface of the private lands and the surface and subsurface estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives. Upon completion of the environmental, appraisal, and title reports a comprehensive list of the acquisition parcels will be published for public review.

Lands being conveyed from the United States will be subject to the following reservations, terms and conditions: 1. All valid existing rights.

The lands to be acquired by the United States from Asarco shall be subject to certain easements, permits

and other encumbrances detailed in the subject title reports.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

In accordance with the regulations of 43 CFR 2201.1, publication of this notice will segregate the affected public land from appropriation under the public land laws, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect shall also exclude appropriation of the subject public land under the mining laws, subject to valid existing rights.

The segregation of the above-described land shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 26, 1991.

**Charles R. Frost,**

*Acting District Manager.*

[FR Doc. 91-18253 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-32-M

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**[CA-940-01-5410-10-B020; CACA 12991]**

## California, Conveyance of Mineral Interests

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private lands described in this notice, containing 320 acres, are segregated and made unavailable for filings under the United States mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E-2841, Sacramento, California 95825, (916) 978-4820.

**Serial No.—CACA 12991**

T. 7 N., R. 9 W., San Bernardino Meridian
Sec. 22, S½.

**County—Los Angeles**

Minerals Reservation—All coal and other minerals.

Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the United States mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: July 25, 1991.

**Nancy J. Alex,**

*Chief, Lands Section.*

[FR Doc. 91-18257 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-40-M

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**[Ca-060-01-4212-11; CACA 27139]**

## California Desert District; Realty Actions, Partial Termination of Small Tract Classification and Public use Classification; Classification of Public Lands for Recreation and Public Purposes; San Bernardino County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action CACA 27139, Classification Terminations, and Classification of Public Land as Suitable for Lease/Conveyance for Recreation and Public Purposes.

**SUMMARY:** Bureau of Land Management (BLM) Order of Classification Small Tract 186, dated November 29, 1949, is hereby terminated as to the N½SW¼SW¼NW¼, section 13, T.4N., R.5W., SBM, and the land opened to operation under the public land laws and the mining laws. BLM Order of Classification CARI 06309, dated February 5, 1965, which carried no segregative effect, is hereby terminated as to the N½SW¼SW¼NW¼, section 13, T.4N., R.5W., SBM.

The following described public land in San Bernardino County, California has been examined and found suitable for classification for lease or conveyance to the Hesperia Recreation and Park District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

**San Bernardino Meridian, California**

T. 4 N., R. 5 W.
Sec. 13, N½SW¼SW¼NW¼.
Containing 5.00 acres.

The Hesperia Recreation and Park District, a local government entity (Public District formed September 14, 1959 by resolution of the San Bernardino County Board of Supervisors under the provisions of chapter 4, division 5 of the Public Resources Code, State of California) has filed an application to lease with the option for conveyance of the above described public land. The Hesperia Recreation and Park District proposes to use the land, in conjunction with adjacent non-Federal lands purchased by the District, for establishment of a public sports complex. The public land will be leased during the development stages. Upon substantial compliance with approved plans of development and management, the land will be conveyed.

The land is not needed for Federal purposes. Lease or conveyance under the Recreation and Public Purposes Act is in the public interest and consistent with the California Desert Conservation Area Plan, as amended. The land is situated near significant population centers and convenient access is provided by paved County roads. The site is physically suitable for the proposed use.

The terms and conditions applicable to a lease or conveyance are:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land together with the right to prospect for, mine and remove such mineral deposits under applicable law.

3. The right to itself, it permittees or licensees to enter upon, occupy and use any part or all of the NW¼SW¼SW¼NW¼, section 13, T. 4N., R.5W., SBM lying within 20 feet of the centerline of transmission line right-of-way of the Southern California Edison Company, Serial No. CARI 01725, for the purposes

described in Power Site Classification 241 (November 11, 1929), and set forth in and subject to the limitations of section 24 of the Federal Power Act of June 10, 1920, as amended (43 U.S.C. 818).

B. The public land will be leased or conveyed subject to the following:

1. Those rights for oil and gas exploration and development granted to Hunt Oil USA Inc., its successors or assigns, by Serial No. CACA 19461, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 186).

2. Those rights for construction, operation and maintenance of the Arrowhead Calectric Shandin 115kV electric transmission line granted to California Electric Corp. (now Southern California Edison Co.), its successors or assigns, by right-of-way Serial No. CARA 01725, pursuant to the Act of December 21, 1928 (43 U.S.C. 617d).

3. Those rights for construction, operation and maintenance of the Lugo-Victor dobule circuit 220kV electric transmission line granted to Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CARI 06740, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

4. Those rights for construction, operation and maintenance of the Victorville-Lugo 500kV electric transmission line and the Nos. 3 and 4 Lugo-Victor double circuit 220kV electric transmission line granted to Southern California Edison Co., its successors or assigns, by right-of-way Serial No. CARI 4180, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

5. Those rights for construction, operation and maintenance of the Control-Calectric double circuit 115kV electric transmission line granted to Southern California Edison Co., its successors or assigns, by right-of-way Serial No. CACA 21596, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register**, the public land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments, regarding the proposed lease/conveyance of the lands, to the Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, (619) 256–3591. Any adverse comments will be reviewed by the District Manager, California Desert District. In the absence of any adverse comments, this classification will become effective 60 days from the date of publication of this notice.

Dated: July 22, 1991.

**Gerald E. Hillier,**

*District Manager.*

[FR Doc. 91–18251 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–40–M

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[ID–942–01–4730–12]

## Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 24, 1991.

The plat representing the dependent resurvey of portions of the east and north boundaries, and subdivisional lines, and subdivision of sections 2, 11, and 12, T. 24 N., R. 2 E., Boise Meridian, Idaho, Group No. 792, was accepted, July 18, 1991.

This survey was executed to meet certain administrative needs of the U.S. Forest Service, Region 1, Nez Perce National Forest.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 24, 1991.

**Gary T. Oviatt,**

*Acting Chief Cadastral Surveyor for Idaho.*

[FR Doc. 91–18255 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–66–M

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[OR–943–01–4214–10; GP1–290; OR–47417]

## Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw 4,239.95 acres of national forest land to protect the scenic segment of the Illinois Wild and Scenic River. This notice closes the lands for up to two years from mining. The lands will remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by October 30, 1991.

**ADDRESSES:** Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–0039.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon State Office, 503–280–7171.

**SUPPLEMENTARY INFORMATION:** On July 3, 1991, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described national forest lands from location and entry under the United States mining laws (30 U.S.C. ch. 2), subject to valid existing rights:

**Willamette Meridian**

*Siskiyou National Forest*

T. 38 S., R. 8 W.,
Sec. 7, SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 18, N½NW¼NE¼ and N½NE¼ NW¼.

T. 38 S., R. 9 W.,
Sec. 1, lot 9, SE¼SW¼, and S½SW¼SE¼;
Sec. 2, lots 2, 3, 4, and 7, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3, lots 1, 2, 3, and 4, S½N½, and N½N½S½;
Sec. 4, lots 1, 2, 3, and 4, NE¼SW¼NE¼, SE¼NE¼, and NE¼NE¼SE¼;
Sec. 5, lots 1 and 2;
Sec. 11, lot 1, NW¼NE¼, N½NE¼NW¼, and N½SE¼NE¼;
Sec. 12, lots 1 and 2, NW¼NE¼, NE¼NW¼, N½S½NW¼, N½SW¼ NE¼, SE¼SW¼NE¼, SE¼NE¼, and NE¼NE¼SE¼.

T. 37 S., R. 9 W.,
Sec. 6, SW¼SE¼ and SE¼SW¼;
Sec. 7, lots 2 and 5, SW¼NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8, lot 5 and lots 7 to 11, inclusive;
Sec. 16, SW¼NW¼SW¼, W½SW¼ SW¼, and SE¼SW¼SW¼;
Sec. 17, lots 1 and 2, E½NE¼, SW¼NE¼, and SE¼;
Sec. 20, N½NE¼NE¼, SE¼NE¼NE¼, E½ SE¼NE¼, E½SE¼, SE¼NW¼SE¼, and E½SW¼SE¼;
Sec. 21, W½E½NW¼, W½NW¼, W½ NE¼SW¼, NW¼SW¼, N½SW¼ SW¼, and SW¼SW¼SW¼;
Sec. 28, W½W½NW¼ and W½NW¼ SW¼;
Sec. 29, E½NE¼, E½W½NE¼, and SE¼;
Sec. 32, lots 1 to 6, inclusive, and N½NE¼;
Sec. 33, SW¼NW¼NW¼, SW¼NW¼, S½SE¼NW¼, SW¼, NW¼NW¼SE¼, S½NW½SE¼, and S½SE¼.

The areas described aggregate 4,239.95 acres in Josephine County, Oregon.

The purpose of the proposed withdrawal is to protect the scenic segment of the Illinois Wild and Scenic River between the mouth of Deer Creek and the mouth of Briggs Creek.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: July 17, 1991.

**Champ C. Vaughan,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 91-18254 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-33-M

## Fish and Wildlife Service

### Notice of Availability of a Draft Recovery Plan for the Purple Cat's Paw Pearlymussel for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the purple cat's paw pearlymussel. This freshwater mussel historically occurred in the Ohio River and its large tributaries in Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently the purple cat's paw pearlymussel is known from only two relic, apparently nonreproducing, populations—one in a reach of the Cumberland River in Tennessee and one in a reach of the Green River in Kentucky. The Service solicits review and comments from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before September 30, 1991 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials recieved are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Biggins at the above address (704/655-1195).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measured needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular speices. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the purple cat's paw pearlymussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*). The areas of emphasis for recovery actions are the major tributaries of the Ohio River system in the States of Virginia, Ohio, Illinois, Indiana, Kentucky, Tennessee, and Alabama. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

#### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 25, 1991.

**Richard G. Biggins,**

*Acting Field Supervisor.*

[FR Doc. 91-18266 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-55-M

### Notice of Availability of a Draft Revised Recovery Plan for the Tar River Spiny Mussel for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife service announces the availability for public review of a draft revised recovery plan for the Tar River spiny mussel. This freshwater mussel is endemic to the Tar River drainage basin in eastern North Carolina. Presently there are only three known populations of the Tar River spiny mussel still in existence, two of which are extremely small. The Service solicits review and comments from the public of this draft plan.

**DATES:** Comments on the draft revised recovery plan must be received on or before September 30, 1991 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806, telephone 704/665-1195. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. John A. Fridell at the address and telephone number shown above.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1553 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This draft recovery plan revises and updates the original recovery plan for the Tar River spiny mussel published by the Service in January 1987. It outlines a mechanism that provides for the recovery and potential delisting of this federally endangered species. The Tar River spiny mussel was officially listed as an endangered species on July 29, 1985, primarily because of habitat and water quality degradation resulting from sedimentation and the runoff and discharge of municipal, industrial, and agricultural pollutants. The major objectives of the plan are habitat protection, reintroduction, and the preservation of genetic material. Comments and information provided during this review will be used in preparing the final recovery plan.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 26, 1991.

**Richard G. Biggins,**

*Acting Field Supervisor.*

[FR Doc. 91–18265 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–55–M

## National Park Service

### Draft Wildland Fire Management Plan and Environmental Assessment, Yellowstone National Park, Wyoming

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of draft plan and environmental assessment.

**SUMMARY:** In accordance with the National Environmental Policy Act and National Park Service (NPS) regulations, a Draft Environmental Assessment (EA) has been prepared for the draft Wildland Fire Management Plan.

The Draft Environmental Assessment presents four alternative strategies for managing wildland fires in Yellowstone National Park. These alternatives include a proposal and a no-action alternative. Each alternative seeks to protect human life, developments, and cultural resources, and to perpetuate natural resources and their associated processes. The proposal and the alternatives were analyzed for their effects on natural and cultural resources and the area's social and economic fabric.

The proposal would manage wildland fires using the full range of fire management techniques: suppression, management-ignited prescribed fire, and prescribed natural fire. Three zones would be established where fires would be suppressed or permitted based upon their threat to human life, developments, and cultural resources. Conditions that determine when, where, or if a fire is permitted include availability of manpower, equipment, and funding, predicted weather conditions, fuels, and fuel moisture content.

The no-action alternative would continue the full-suppression actions now in place throughout the park. Alternative B would use suppression techniques and management-ignited prescribed fire only to manage wildland fires. Alternative C would use suppression techniques and prescribed natural fire only to manage wildland fires. In Alternatives B and C, zones and prescriptions would be established, as in the proposal, to determine when, where, how, or if fires would be permitted.

**DATES:** Comments on the draft plan and EA should be sent to the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190, no later than August 30, 1991.

**ADDRESSES:** Copies of the draft plan and EA are available from the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190. Copies are also available for review in the Office of Public Affairs, Room 155, National Park Service, Rocky Mountain Regional Office, 12795 W. Alameda Pkwy., Denver, Colorado 80225.

Dated: July 19, 1991.

**Ben L. Moffett,**

*Acting Regional Director, Rocky Mountain Region.*

[FR Doc. 91–18192 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–70–M

### Phoenix Indian School Property, Arizona; Sale of Land

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice of sale of land—Phoenix, Arizona.

**SUMMARY:** Notice is hereby given that the Secretary of the Interior is accepting sealed bids for a period of 90 days from the publication of this notice for the purchase of a 71.84 acre (more or less) tract of land in the business district of Phoenix, Arizona, pursuant to title IV of the Arizona-Idaho Conservation Act of 1988, Public Law 100–696 (the Act).

**DATE:** Written offers must be received on or before October 30, 1991.

**ADDRESSES:** For information concerning the zoning and other legal requirements applicable to the lands: Name: Frank Dolasinski; Address: City of Phoenix, Planning Department, 125 E. Washington, Phoenix, Arizona 85004; Telephone: (602) 261–8792.

For bid information and details on the sale: Name: P. Daniel Smith; Address: General Services Administration, Office of the Commissioner, Federal Property Resources Service, room 5241, 18th and F Streets NW., Washington, DC 20405; Telephone: (202) 501–0210.

To submit sealed bids: Name: Secretary of the Interior (Attention: Joseph E. Doddridge); Address: Department of the Interior, Office of the Secretary, Mail Stop 3156–MIB, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Doddridge, Department of the Interior, Office of the Secretary, Mail Stop 3156–MIB, 1849 C Street NW., Washington, DC 20240; (202) 208–3928.

**SUPPLEMENTARY INFORMATION:**

**Description of Land**

The property being offered is a 71.84 acre portion of a 110.97 acre tract known as the Phoenix Indian School Property. It is situated in the Northeastern quadrant of the intersection at Indian School Road and Central Avenue. Under the terms of the sale, the purchaser will acquire that portion of the Phoenix Indian School Property made up of the entire 110.97 acre parcel minus a 16 acre parcel in the southeastern corner of the property, which is to be transferred to the Department of Veterans' Affairs, three parcels totalling 3.13 acres that are road rights-of-way to be deeded to the city of Phoenix, and a single 20 acre parcel which is to be deeded to the city of Phoenix. The location of the 20 acre parcel to be conveyed to the city of Phoenix may be determined by a mutual agreement between the purchaser and the City at a time prior to closing. Absent such an agreement, the City shall acquire the 20 northernmost acres of the Phoenix Indian School Property.

**Background**

The offering of this property is made pursuant to subsections 402(h)(2) through 402(h)(9) of title IV of the Act, which ratified and established legal terms for an Exchange Agreement among the United States, Collier Enterprises, Collier Development Corporation, and Barron Collier Company (known collectively as Collier), dated May 12, 1988. Under the Exchange Agreement and the ratifying legislation, Collier was given an option of accepting the property for the greater of $80,000,000, or the value of the property as established by an independent appraisal commissioned by the National Park Service, and based on a "specific plan" as provided in the Planning and Development Agreement between the city of Phoenix and Collier, dated July 1, 1987, as amended on December 21, 1988. At the close of the 90 day bidding process, the Secretary of the Interior shall have 15 days to determine among all bids submitted the one that constitutes the best qualifying offer. Once the best qualifying offer has been identified, Collier will have 30 days in which to determine whether it will exercise its first refusal option by making a binding offer to purchase the property for 105 percent of the best qualifying offer. If Collier does not exercise this option within 30 days, the best qualified offer will be accepted by the U.S. government, and closing will take place within 90 days. Copies of the Exchange Agreement between the United States and Collier, the ratifying legislation (title IV of the Arizona-Idaho Conservation Act, Public Law 100–696), and the Planning and Development Agreement between Collier and the city of Phoenix are available to potential bidders.

**Minimum Bid**

Pursuant to subsection 402(h)(4) of the Act, the minimum acceptable price for the Phoenix Exchange Property is $80,000,000 plus an amount equal to the costs determined by the Secretary of the Interior as reimbursable to Collier for all expenses associated with the Exchange Agreement as defined by subsection 402(i)(2) of Public Law 100–696. The costs submitted by Collier under this provision total $4,063,681. Therefore, the minimum acceptable bid is $84,063,681, subject to an audit of Collier's costs being conducted by the Office of Inspector General, U.S. Department of the Interior. Should the costs claimed by Collier be reduced by any amount, the minimum acceptable bid for the Phoenix Exchange Property shall be reduced by that same amount. Notice of the results of the Inspector General's audit will be published in the **Federal Register** and all parties who have requested bidding packages will be directly notified of the audit results.

**Conditions of Sale**

In order to be considered qualified, an offer must be for an amount equal to or greater than the minimum acceptable bid and meet the terms and conditions prescribed by the Act. Among those terms and conditions are:

1. A qualified bid must include an offer to the United States to purchase the entire Phoenix Exchange Property for cash in a single transaction. Such offer must, by its terms, be irrevocable for a period of at least 120 days from the date that it is delivered to the Secretary of the Interior and be legally binding on the offeror upon acceptance of the offer by the United States.

2. In a manner consistent with subsection 402(h)(3)(D) of the Act, a qualified bid must also include an offer to the United States to enter into a Trust Fund Payment Agreement under the terms of section 403 of the Act. Such a trust fund agreement would account for that portion of the purchase price which is equal to the full purchase price minus the amount of the proceeds due to Collier for the purchase of the Florida property ($45,100,000) plus Collier's approved costs. Under the terms of the Act, at some time prior to September 25, the Secretary of the Interior shall elect whether this portion of the purchase price shall be paid in a lump sum or under the Trust Fund arrangement provided in the Act. When a final determination on this issue is made by the Secretary of the Interior, a notice of such determination shall be published in the **Federal Register** and all parties who have requested bid packages will be directly notified.

3. Under the terms of subsection 402(h)(3)(E), the offer must contain evidence that the offeror has made an offer to the city of Phoenix to enter into the Planning and Development Agreement. By its terms such offer to the City must be binding if approved by the Phoenix City Council.

4. The written offer must contain a provision which would allow for access to and recovery of archeological items by the Secretary of the Interior or his contractor within a reasonable period of time, or other mutually agreeable arrangements made with the Department of the Interior to recover and curate or preserve the archeological remains in situ. There must also be expressed in the offer a willingness to negotiate with the Department of the Interior (in consultation with the Arizona State Historic Preservation Officer and the Advisory Council on Historic Preservation) to preserve an Indian War Memorial located on the property in place or, if preservation in place is not deemed prudent and feasible, to relocate the Memorial to an appropriate location.

5. The written offer must contain full and substantial evidence of the capacity of the offeror to enter into and perform each of the obligations required to be taken by the offeror, including a description of financing arrangements to be undertaken by the offeror in order to perform the payment obligation of the purchaser upon closing of the purchase transaction. The rights and obligations of a purchaser shall be comparable in all material respects to the rights and obligations of Collier under the Exchange Agreement, except as otherwise provided by the Act. All financial and other information that the offeror considers confidential should be so marked by the offeror. Every attempt will be made to preserve the confidentiality of this information, except for appropriate review by the Department of the Interior, the General Services Administration, the General Accounting Office, and the Congress of the United States.

**Deposit**

Each bid must be accompanied by a bid deposit in the amount of $4,000,000,

which will be in the form of a certified check, cashier's check, or postal money order payable to the order of: "The U.S. Department of the Interior or (name of bidder)." Such deposit shall be forfeited should the United States accept the offer and the offeror fail to meet the obligations under the terms set forth in the offer.

### Closing

Closing of the purchase transaction shall take place within 90 days after acceptance by the United States of the best qualifying offer, subject to the requirements respecting deposit of payment under subsection 402(i) of the Act.

Dated: July 25, 1991.

Mike Hayden,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 91-18191 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-70-M

## Minerals Management Service

## Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

**SUMMARY:** The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

| Activity/Operator | Location | Date |
|---|---|---|
| Santa Fe International Corporation, one development well, SEA No. N-3875. | High Island Area, East Addition, South Extension, Block A-373, Lease OCS-G 7367, 105 miles southeast of the nearest coastline in Texas. | 01/29/91 |
| Chevron U.S.A., one exploratory well, SEA No. N-3912..... | Destin Dome Area, Block 97, Lease OCS-G 8336, 29 miles south of Florida coastline..... | 12/28/90 |
| Southern Natural Gas Company, pipeline activity, SEA No. OCS-G 12720. | Mississippi Canyon Area; Blocks 397, 353, 309, 310, and 266; Grand Isle Area, Block 80; West Delta Area, Block 137, 136, 135, 120, 121, 116, 101, 102, 91, 90, 75, 76, 61, 60, 47, 48, 27, and 26; Lease OCS-G 12720, 3 miles south of the nearest coastline in Louisiana. | 03/14/91 |
| Shell Offshore Inc., 32 development wells, SEA No. U-0703. | Garden Banks Area; Blocks 427, 471, 426, and 470; Leases OCS-G 7493, 7498, 8241, and 8248; 119 miles southwest of the nearest landfill in Terrebonne Parish, Louisiana. | 04/26/91 |
| Roberts & Bunch Offshore, Inc., one exploratory well, SEA No. R-2716. | High Island Area, East Addition, South Extension, Block A-353, Lease OCS-G 7362, 110 miles southeast of the nearest coastline on Galveston Island, Texas. | 06/21/91 |
| Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 90-101. | Vermilion Area, Block 241, Lease OCS-G 3132, 65 miles south of Vermilion Parish, Louisiana. | 02/05/91 |
| Forest Oil Corporation, structure removal operations, SEA No. ES/SR 91-07S. | Eugene Island Area, Block 309, Lease OCS-G 0997, 78 miles south of St. Mary Parish, Louisiana. | 02/05/91 |
| Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 91-008. | West Cameron Area, South Addition, Block 616, Lease OCS-G 2558, 115 miles south of Cameron Parish, Louisiana. | 03/05/91 |
| Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-08S. | Matagorda Island Area, Block 664, Lease OCS-G 3463, 10 miles south of Calhoun County, Texas. | 02/11/91 |
| Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-09S. | Vermilion Area, Block 326, Lese OCS-G 4428, 97 miles south of Vermilion Parish, Louisiana. | 02/08/91 |
| Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-010. | West Cameron Area, Block 101, Lease OCS 0246, 13 miles south of Cameron Parish, Louisiana. | 02/21/91 |
| Chevron U.S.A., structure removal operations, SEA Nos. ES/SR 91-10S, 91-11S, 91-12S, 91-13S, 91-14S, and 91-15S. | Vermilion Area; Blocks 250, 155, and 261; Leases OCS-G 1149, 2872, and 3328; East Cameron Area, Block 280, Lease OCS-G 2049; and High Island Area, Block A-281, Lease OCS-G 3377; 69 miles south of Vermilion Parish, Louisiana. | 03/19/91 |
| Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-011. | High Island Area, Block 135, Lease OCS 0741, 30 miles south of Jefferson County, Texas. | 02/26/91 |
| ODECO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-013. | Ship Shoal Area, Block 114, Lease OCS 064, 15 miles south of Terrebonne Parish, Louisiana. | 02/01/91 |
| Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-014. | West Cameron Area, Block 110, Lease OCS 081, 20 miles south of Cameron Parish, Louisiana. | 04/05/91 |
| UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-015. | High Island Area, East Addition, South Extension, Lease OCS-G 2733, 102 miles south of Cameron Parish, Louisiana. | 02/20/91 |
| Chevron U.S.A., structure removal operations, SEA No. ES/SR 91-16S. | Main Pass Area, South and East Addition, Block 160, Lease OCS-G 5245, 20 miles east of Breton National Wildlife Refuge and Wilderness Area. | 03/27/91 |
| UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-016. | Eugene Island Area, Block 32, Lease OCS 0196, 12 miles south of St. Mary Parish, Louisiana. | 02/06/91 |
| Mobil Exploration & Producing U.S. Inc., removal operations, SEA No. ES/SR 91-17S. | High Island Area, Block A-83, Lease OCS-G 7300, 44 miles southeast structure of Galveston County, Texas. | 04/30/91 |
| ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-18S. | Main Pass Area, Block 175, Lease OCS-G 8753, 65 miles east of St. Bernard Parish, Louisiana. | 04/4/91 |
| Sandefer Offshore Operating Company, structure removal operations, SEA No. ES/SR 91-19A. | East Cameron Area, Block 129, Lease OCS-G 3534, 36 miles south of Cameron Parish, Louisiana. | 06/11/91 |
| ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-19S. | Main Pass Area, Block 245, Lease OCS-G 6828, 65 miles west of Plaquemines Parish, Louisiana. | 04/5/91 |
| ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-20S. | Main Pass Area, Block 128, Lease OCS-G 4009, 17 miles northeast of St. Bernard Parish, Louisiana. | 04/12/91 |
| ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-21S. | Main Pass Area, Block 263, Lease OCS-G 6829, 65 miles west of Plaquemines Parish, Louisiana. | 04/11/91 |
| UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-22S. | High Island Area, South Addition, Block A-494, Lease OCS-G 3244, 88 miles southeast of Galveston, Texas. | 04/26/91 |
| Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-23S. | East Cameron Area, Block 240, Lease OCS-G 4101, 90 miles south of Cameron Parish, Louisiana. | 04/30/91 |
| Energy Development Corporation, structure removal operations, SEA No. ES/SR 91-024. | Main Pass Area, Block 96, Lease OCS-G 5243, 13 miles east of St. Bernard Parish, Louisiana. | 03/13/91 |

| Activity/Operator | Location | Date |
|---|---|---|
| Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-24S. | Ship Shoal Area, Block 259, Lease OCS-G 5044, 50 miles south of Terrebonne Parish, Louisiana. | 05/07/91 |
| Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-25S. | Vermilion Area, Block 223, Lease OCS-G 5426, 66 miles south of Vermilion Parish, Louisiana. | 04/26/91 |
| Diamond Shamrock Offshore, structure removal operations, SEA No. ES/SR 91-026. | West Cameron Area, Block 192, Lease OCS-G 4757, 25 miles south of Cameron Parish, Louisiana. | 03/13/91 |
| Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-27S. | South Timbalier Area, Block 36, Lease OCS-G 2624, 10 miles south of Terrebonne Parish, Louisiana. | 06/11/91 |
| Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-029. | South Timbalier Area, Block 177, Lease OCS-G 1260, 42 miles south of Lafourche Parish, Louisiana. | 03/26/91 |
| Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-030. | Matagorda Island Area, Block 712, Lease OCS-G 4550, 25 miles southeast of Aransas County, Texas. | 05/29/91 |
| Linder Oil Company, structure removal operations, SEA No. ES/SR 91-031. | Main Pass Area, Block 57, Lease OCS-G 10895, 10 miles west of Lafourche Parish, Louisiana. | 03/29/91 |
| Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-034. | Ship Shoal Area, Block 33, Lease OCS 0336, 15 miles south of Cameron Parish, Louisiana. | 05/01/91 |
| Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-035. | Ship Shoal Area, Block 29, Lease OCS 0345, 6 miles south of Terrebonne Parish, Louisiana. | 04/05/91 |
| Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-040/041. | West Cameron Area, Block 543, Lease OCS-G 2010, 105 miles south of Cameron Parish, Louisiana. | 05/20/91 |
| Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-042. | East Cameron Area, Block 34, Lease OCS-G 2855, 8 miles south of Cameron Parish, Louisiana. | 05/30/91 |
| NERCO Oil & Gas Inc., structure removal operations, SEA No. ES/SR 91-043. | High Island Area, South Addition, Lease OCS-G 4578, 72 miles southeast of Galveston County, Texas. | 05/24/91 |
| Quintana Petroleum Corporation, structure removal operations, SEA No. ES/SR 91-051. | Ship Shoal Area, Block 15, Lease OCS-G 3411, 4 miles south of Terrebonne Parish, Louisiana. | 06/14/91 |
| Mobil Exploration & Producing, structure removal operations, SEA Nos. ES/SR 91-052/053/054/055. | Eugene Island Area; Blocks 128, 125, 120, and 119; Leases OCS 053, 051, 050, and 049; 50 miles south of St. Mary Parish, Louisiana. | 06/07/91 |
| Energy Development Corporation, structure removal operations, SEA No. ES/SR 91-056. | Eugene Island Area, Block 46, Lease OCS-G 4222, 15 miles south of St. Mary Parish, Louisiana. | 05/02/91 |
| Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-057. | Brazos Area, Block A-17, Lease OCS-G 2658, 41 miles south of Brazoria County, Texas.. | 05/20/91 |
| Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-063. | West Delta Area, Block 122, Lease OCS-G 1104, 20 miles southwest of Plaquemines Parish, Louisiana. | 06/11/91 |

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

**FOR FURTHER INFORMATION CONTACT:** Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 23, 1991.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 91-18249 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-MR-M

## Request for Comments on the Proposed Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program for 1992-1997

**AGENCY:** Minerals Management Service (MMS), Department of the Interior.

**SUMMARY:** Comments are requested on the second of three proposals for a new program for the period mid-1992 through mid-1997. The new program will succeed the current one, which covers the period July 1987 through June 1992.

Statutorily required steps in the program development process following this notice include the development of a Proposed Final Program and a Final Program. A draft Environmental Impact Statement (EIS) is being issued along with the Proposed Program. A final EIS will also be prepared. Comments submitted in response to this notice will be considered in preparing the Proposed Final Program and the final EIS.

**DATES:** Comments and information must be received on or before October 30, 1991. Commenters are strongly advised to submit their comments by the due date. Comments received after that date may not receive full consideration.

**ADDRESSES:** Comments and information should be mailed to: Director, Minerals Management Service (MS-4013), 1849 C Street, NW., Washington, DC 20240. Hand deliveries to the Department of the Interior may be made at 1849 C Street, NW., room 2525, Washington, DC. Envelopes or packages should be marked "Comments on the Comprehensive OCS Program." If any privileged or proprietary information which the respondent wishes to be treated as confidential is submitted, the envelope should be marked "Contains Confidential Information." Under section 18(c)(1) of the OCS Lands Act, any suggestions from the executive of any affected local government in an affected State should also be submitted to the Governor of such State.

**FOR FURTHER INFORMATION CONTACT:** For information on the development of the new comprehensive program, telephone Paul Stang or Tim Redding, Branch of Program Development and

Planning, at (202) 208–3072. Copies are available of an announcement document entitled "Summary and Decision" and a compilation of the underlying analyses, entitled "Decision Documents." A notice of availability of the draft EIS prepared for this program will appear in the August 2, 1991, issue of the **Federal Register.** For copies of block-specific maps and documents describing the proposed comprehensive program, telephone orders can be placed by calling Jan Arbegast at the above number.

**SUPPLEMENTARY INFORMATION:**

Comments are requested from States, local governments, other interested individuals and groups, the oil and gas industry, and Federal agencies to assist in preparing a Comprehensive OCS Natural Gas and Oil Resource Management Program to cover the period mid–1992 to mid–1997.

Development of the comprehensive program enables the Federal Government, affected States and localities, other interested parties, and industry to plan for coordination concerning OCS oil and gas activities.

The program preparation process will follow all the analytic and procedural steps set out in section 18 of the OCS Lands Act. As part of this process, consideration will continue to be given to new approaches to the OCS program, with the aim of reaching consensus as well as obtaining a proper balance between the potential benefits and risks.

The preparation of the EIS associated with the new program will be in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA). As part of the NEPA process initiated in July 1989, comments received in response to this notice will be considered in the preparation of the EIS.

**The Proposed Comprehensive Program**

Based upon consideration of relevant factors in section 18 of the OCS Lands Act, the Secretary's decision on the Proposed Program affirms, in large part, the decision made for the Draft Proposed Program. Notable features which distinguish the Proposed Program from the February announcement include:

- Sixty-two blocks have been removed from further leasing consideration. Fifty blocks within the Wallops Island Flight Clearance Zone off the coast of Virginia have been removed for safety reasons at the request of the National Aeronautics and Space Administration. An additional 12 adjacent blocks have been removed because, if considered alone, they likely would have little exploration interest.
- In response to comments on the Draft Proposed Program, a more detailed description of the new Area Evaluation and Decision Process is provided which includes information on the criteria that will be used in the decision process.
- Also in response to comments, new options have been developed and are presented for comment in the companion Decision Documents.
- Among the new options: Slow the pace of leasing, establish coastal buffers, and exclude certain sensitive biological features.
- New analyses evaluate the social benefits and costs associated with the program options, assess the potential of alternative energy sources to replace natural gas and oil production from the OCS, and estimate the relative environmental sensitivity of the various planning areas.
- Pursuant to NEPA, a draft EIS has been prepared for comment and public hearings. This presents an opportunity to comment on the results of the environmental analyses conducted for the Proposed Program and for the program alternatives under consideration.

Maps 1–4 depict all 26 OCS planning areas and the portions of planning areas included for the consideration of leasing. Map 5 shows the location of the 62 blocks mentioned above.

The Proposed Program continues the new, comprehensive, long-term approach to OCS management and planning as described below.

**I. Comprehensive Program Approach**

A key element of the new program is the consideration of the full range of integrated OCS program elements including geologic and environmental studies to provide a basis for consideration of areas for leasing as well as research and development and regulatory activities to support safe and clean operations. The new comprehensive approach divides the OCS into 26 planning areas and places them in the following 3 categories of activities:

*Category 1*

Plan for geologic and environmental studies and consider for leasing in 1992–1997. The term consider for leasing means that consultations and analyses under NEPA and the OCS Lands Act are planned, and not necessarily that all or even part of the area analyzed will be offered for lease. While leasing would be considered in 15 areas, the proposal provides for up to 23 sales in 12 of those areas. (This contrasts with 39 sales in 21 areas in the 1987 Program.) The number of areas under consideration for leasing will be narrowed down from 15 to 12 in the following way: One sale will be considered for either Hope Basin or St. George Basin; and one sale will be considered for Navarin Basin, or Norton Basin, or St. Matthew-Hall. (See Question 4 below.)

*Category 2*

Consider for MMS geologic and environmental studies but no leasing (this category includes those areas which President Bush's announcement of June 26, 1990, stated would not have leasing before the year 2000).

*Category 3*

No leasing and no MMS studies related to program decisions.

Table 1 categorizes the 26 planning areas and indicates the tentative timing of proposed lease sales in Category 1 areas.

Provisions concerning operations will be effective in those planning areas where operations are permitted under the OCS Lands Act. Tentative plans concerning operations, as well as geologic and environmental studies, included as part of this proposed comprehensive program appear in the "Decision Documents" available by calling the above telephone number.

Under this approach, some planning areas are designated for consideration of further study rather than consideration of leasing in the period 1992–1997. Such studies would provide an improved basis for decisionmaking concerning that area in the period beyond 1997.

**II. New Approach to the Consideration of Areas for Leasing**

The proposed comprehensive program provides for a new approach to the consideration of oil and gas leasing in the OCS:

—Tailoring the program for the different characteristics of each region and planning area;
—Being more selective, giving priority to the areas with oil and gas potential and avoiding areas where the risks of development are too great;
—Limiting the size of the Area Identification in some areas, where appropriate to the geology and environmental concerns (Mid- and South Atlantic (250 blocks); Eastern Gulf of Mexico (200 blocks); and Southern California (87 blocks));
—Using a new Area Evaluation and Decision Process (AEDP) for the consideration of leasing, heightening attention to the adequacy of information and the resolution of conflicts; and

—Responding with sensitivity to the concerns of residents of areas affected by offshore development.

*The Area Evaluation and Decision Process*

The AEDP is an integral part of the new approach to the OCS program. It provides a framework for the activities which precede the decision of whether and under what conditions to hold an individual OCS oil and gas lease sale. These activities include coordination and consultation, information determination, environmental study, resource evaluation, and solicitation and review of comments under the OCS Lands Act and NEPA.

An expanded description of the AEDP was prepared for the Proposed Program in response to comments received by MMS concerning the Draft Proposed Program issued in February 1991. A detailed discussion of the AEDP is presented in the Summary and Decision which is available by calling the above telephone number.

**III. Assurance of Fair Market Value**

The current two-phased bid adequacy review process will be retained, with the basic minimum bid level proposed at $25 per acre, subject to sale-by-sale reconsideration.

*Information Requested*

—All Parties

The MMS requests the comments of all parties on the proposed comprehensive program as described above. Information and criteria which support comments are also requested to assist MMS in its deliberations.

Comments are solicited on all elements of the Proposed Program: the configuration of planning area boundaries; areas included for consideration for leasing; the frequency of sales proposed for consideration in a planning area; the AEDP; provisions to assure the receipt of fair market value; designation of geologic and environmental study areas; and provisions to assure continued safe operations.

Parties requesting the inclusion of one or more portions of the OCS for the consideration of leasing in the new 5-year program should also indicate where leasing consideration should not or need not be pursued.

Parties requesting the exclusion of one or more portions of the OCS from consideration for leasing in the new 5-year program should also indicate where consideration for leasing should be pursued.

Respondents are urged to illustrate their written comments by marking up block-specific maps of areas to be considered for leasing. These maps have been prepared for the 15 planning areas in which leasing consideration is indicated as part of the Proposed Program. Copies of these maps can be obtained by calling the telephone number indicated above under "For Further Information Contact."

Comments also are sought on the following:

(1) The analyses presented in the detailed decision documents, in particular:

(a) Core analyses; and

(b) Sensitivity analyses which show the implications of different assumptions—including the proposed sensitivity analysis for social costs, which will examine the implications of very large oil spills, nonuse values, and other issues. With respect to oil spills, the sensitivity analysis will include a range of potential damages for infrequent, very large oil spills.

(2) Ways to help build consensus concerning OCS issues—in particular, what consultation mechanism is best for each region?

(3) The proposed new AEDP, specifically:

(a) The proposed timing of issuance of the proposed Notice of Sale and draft EIS;

(b) The proposed procedure for preparing a lease sale consistency determination pursuant to the Coastal Zone Management Reauthorization Act of 1990;

(c) The criteria proposed for determining the adequacy of information for program decisions; and

(d) Whether the proposed Request for Interest step could be eliminated and its function met sufficiently by the Call for Information and Nominations step.

(4) Concerning the two Bering Sea groupings of planning areas (Hope/St. George and Norton/Navarin/St. Matthew-Hall) being considered for one lease sale each as explained above, should the selection of one planning area within each group take place at the Proposed Final Program stage or should the decision be made following a Request for Interest and Comments under the AEDP?

(5) For the two Bering Sea groupings, indicate which planning area in each group would be preferred if a decision were to be made to select only one area in each group at the Proposed Final Program stage under section 18.

—Additional Information Requested from the Oil and Gas Industry

In addition to the information requested above, oil and gas industry respondents are requested, as they were for the February 1991 draft proposal, to provide information which could be used to identify the areas most likely to contain natural gas and oil accumulations of sufficient size and number to warrant leasing, exploration, and commercial development activities under current and foreseeable technological and economic conditions. It should be emphasized that information from industry will be considered along with comments on possible environmental effects and the results of various environmental and other cost and economic analyses to determine the size, timing, and location of areas which may be considered for leasing in the 5-year program. All requested information should be based on estimates of resources expected to be unleased as of mid-1992.

(1) Rank each whole planning area from 1 to 26. The ranking should reflect a combination of resource assessment and interest in leasing, exploration, and development.

(2) For the 15 planning areas where the Proposed Program provides for the consideration of leasing, provide a ranking from 1 to 14 (rank Mid- and South Atlantic as a unit). The ranking should reflect interest in the development of natural gas and oil resources. This ranking should take into account only those portions of the planning areas included for the consideration of leasing.

Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the OCS Lands Act. In order that only privileged or proprietary information be treated as confidential, it should be submitted separately and marked as confidential. Privileged or proprietary information

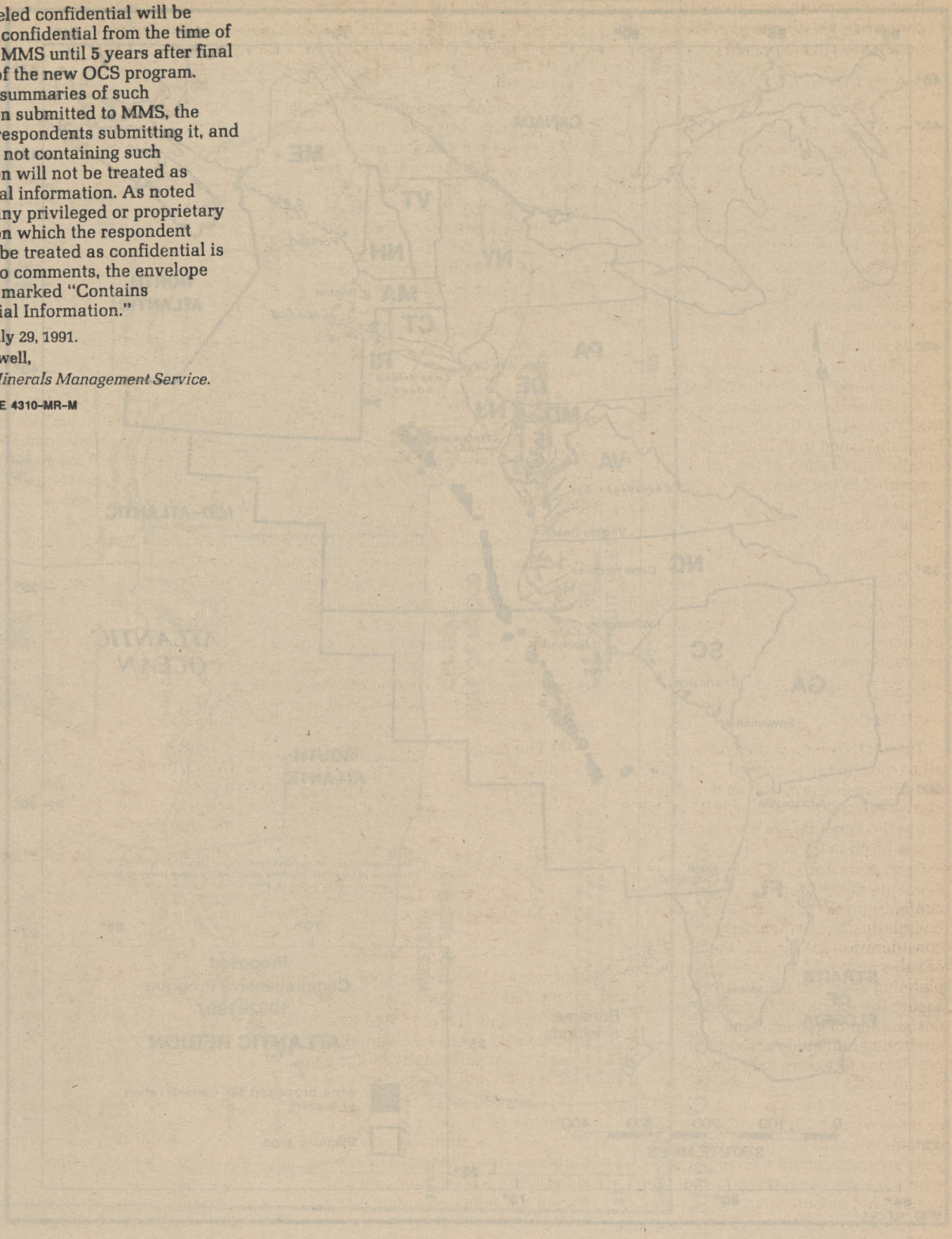
that is labeled confidential will be treated as confidential from the time of receipt by MMS until 5 years after final approval of the new OCS program. However, summaries of such information submitted to MMS, the names of respondents submitting it, and comments not containing such information will not be treated as confidential information. As noted above, if any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked "Contains Confidential Information."

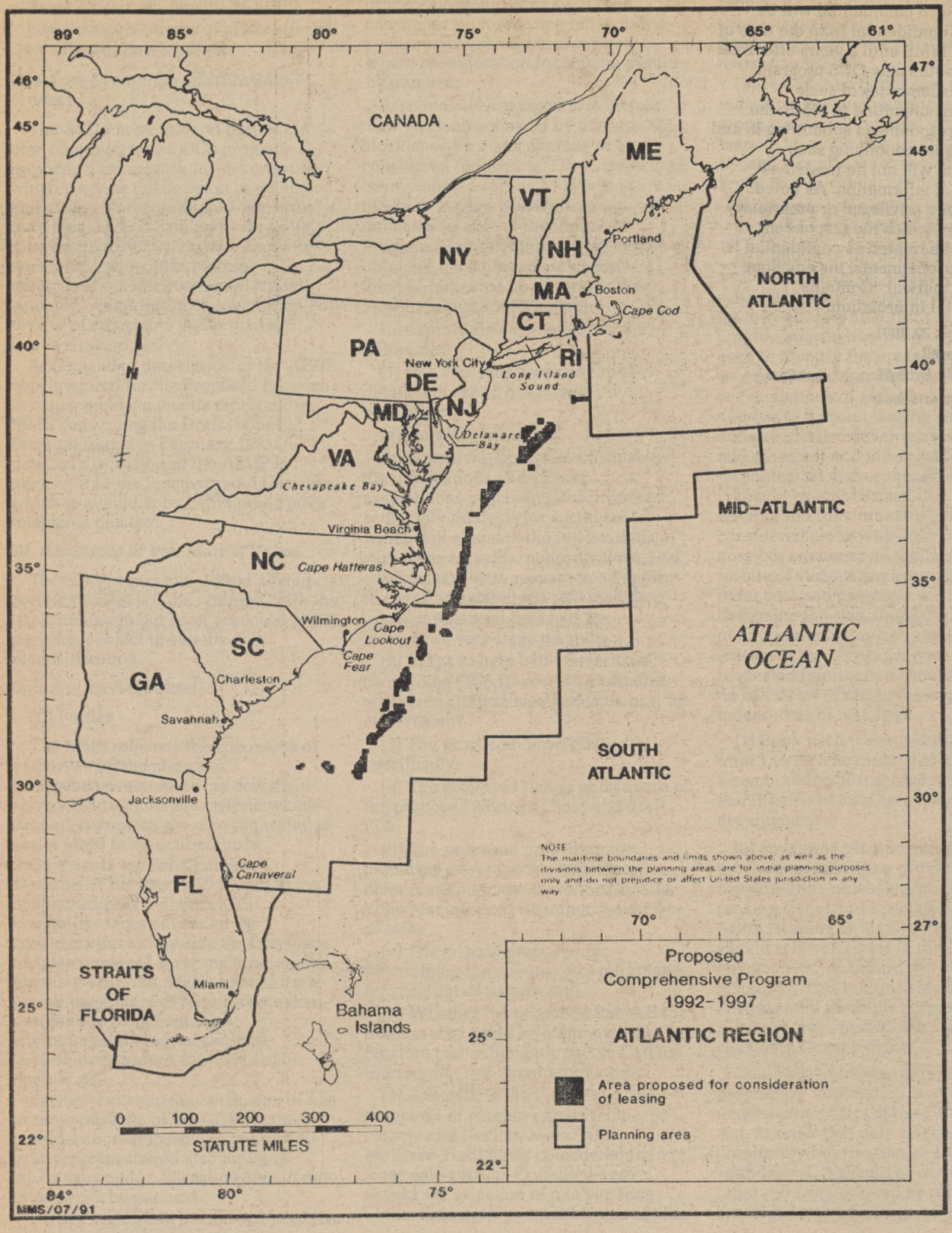
Dated: July 29, 1991.

**S. Scott Sewell,**

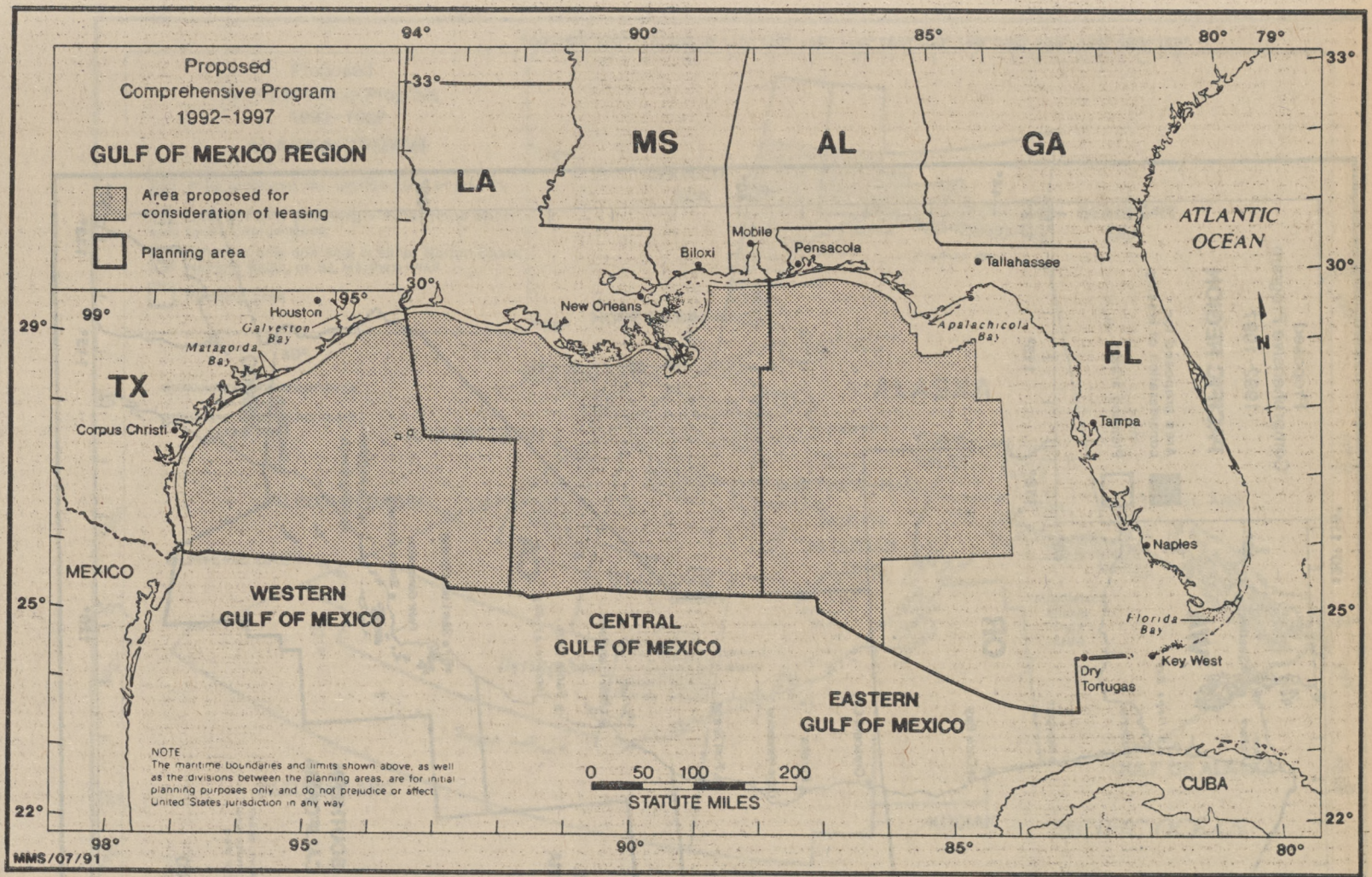
*Director, Minerals Management Service.*

BILLING CODE 4310-MR-M

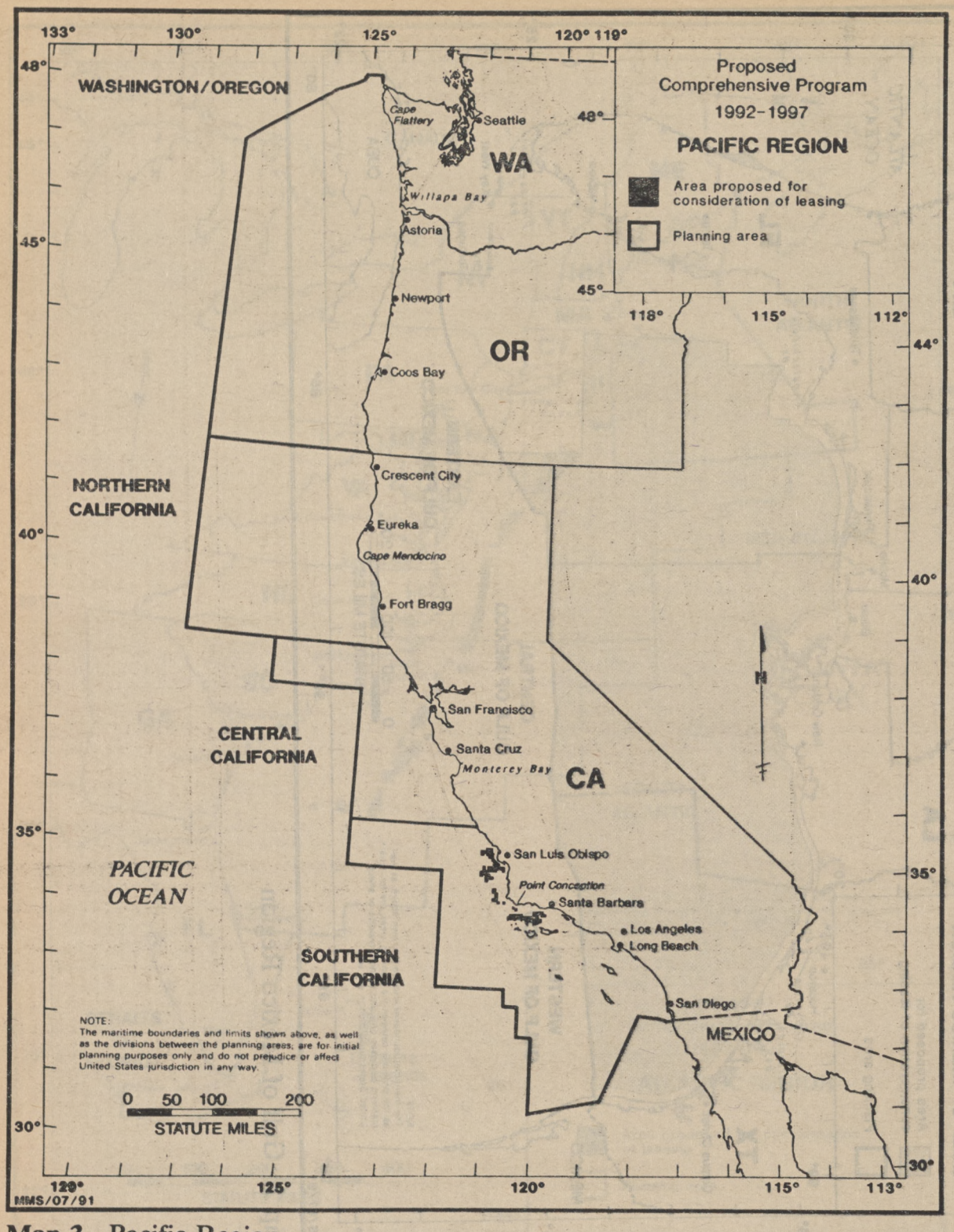




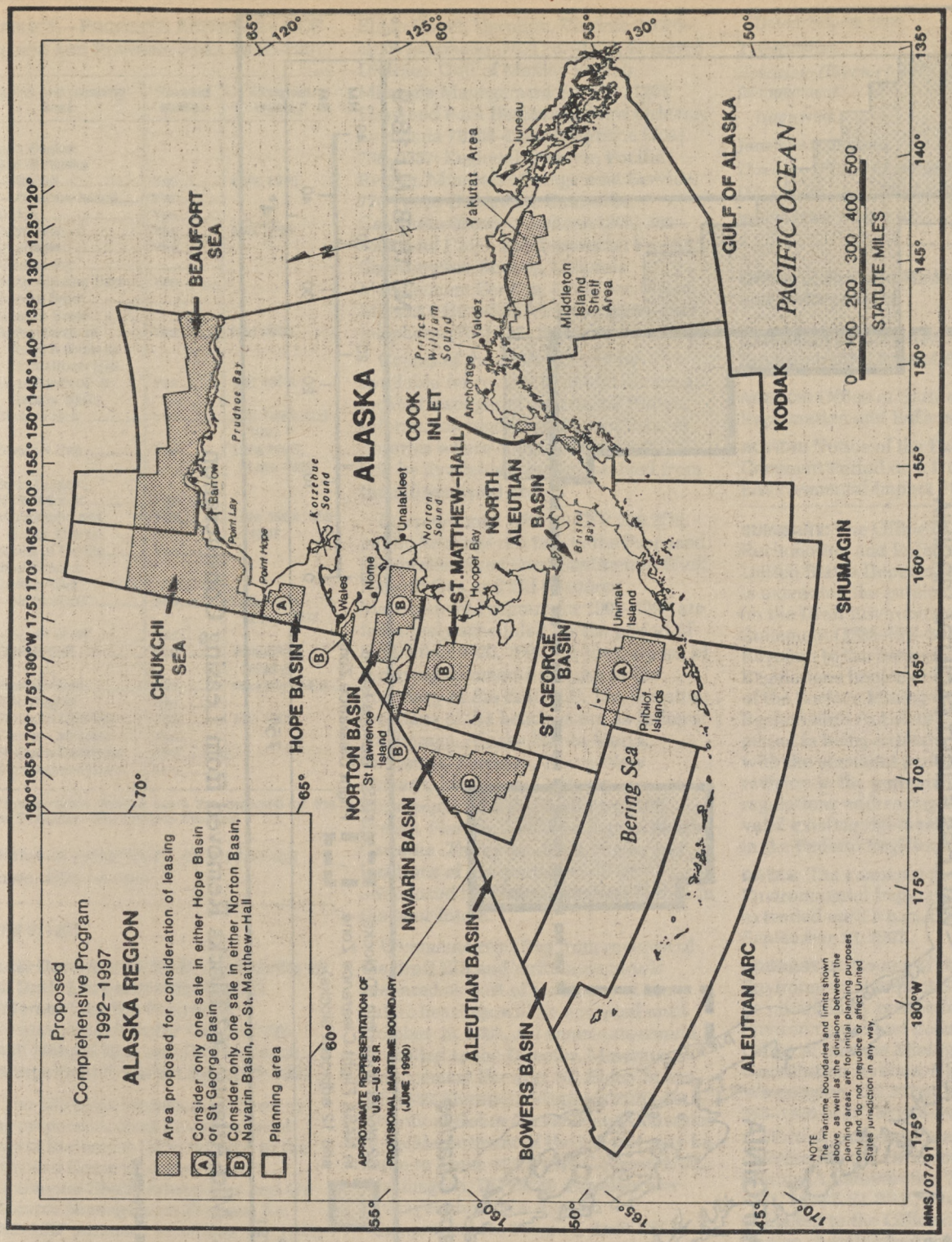

Map 1. Atlantic Region



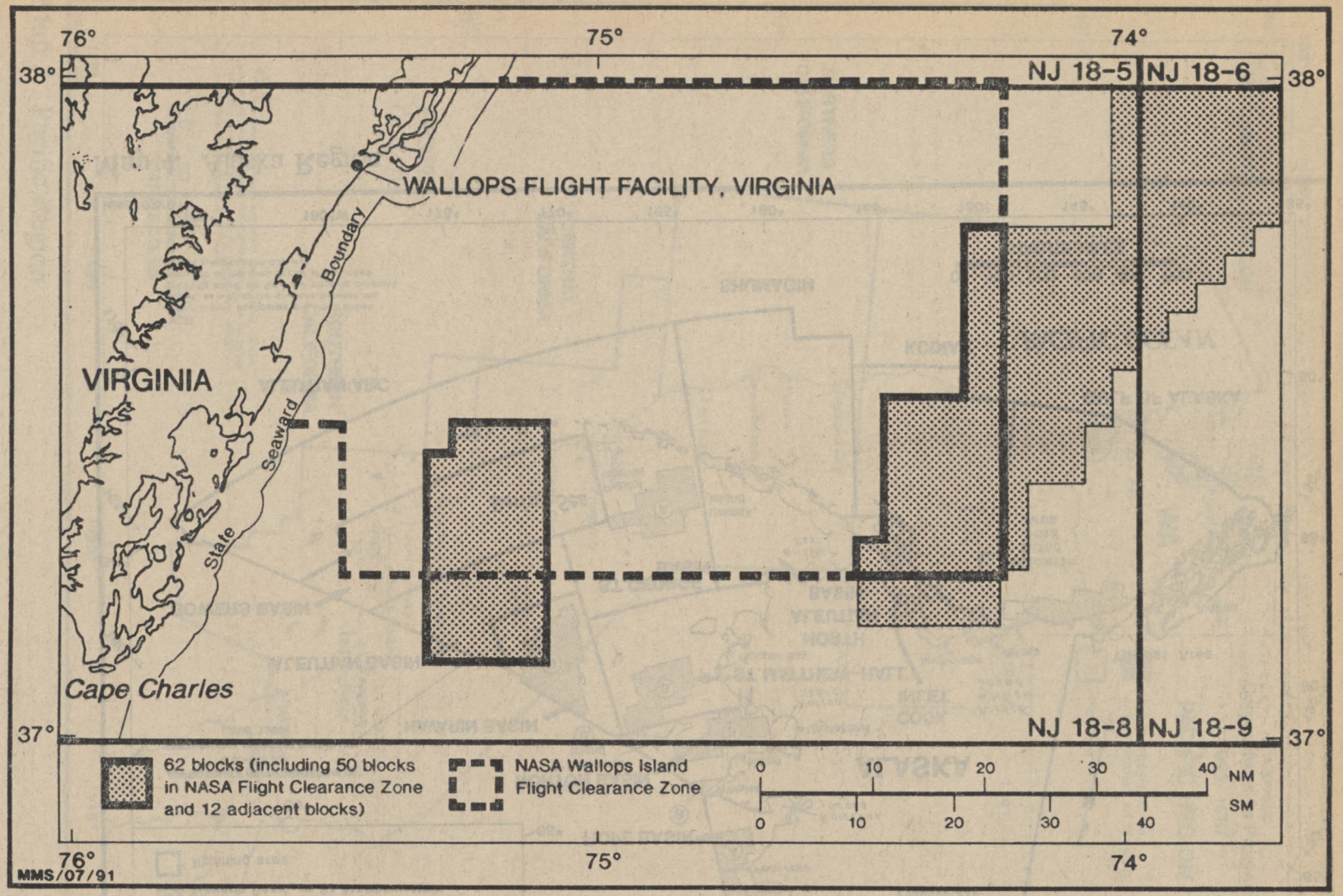

**Map 2.** Gulf of Mexico Region




Map 3. Pacific Region




Map 4. Alaska Region




Map 5. Mid-Atlantic--62 Blocks Removed from Leasing Consideration

BILLING CODE 4310-MR-C

TABLE 1.—PROPOSED ACTIVITY BY OCS REGION AND PLANNING AREA 1992–1997

| Region and planning area | Planned studies | Consider leasing* |
|---|---|---|
| Alaska Region: | | |
| Gulf of Alaska | | |
| —Yakutat | Yes | Late 1995. |
| —Middleton Island | Yes | |
| Kodiak | Yes | |
| Cook Inlet | Yes | Mid 1994. |
| Shumagin | Yes | |
| Aleutian Arc | | |
| North Aleutian Basin | Yes | |
| Bowers Basin | | |
| Aleutian Basin | | |
| Norton Basin or Navarin Basin or St. Matthew-Hall. | Yes | Mid 1996. |
| Hope Basin or St. George Basin. | Yes | Mid 1995. |
| Chukchi Sea | Yes | Mid 1994, Mid 1997 |
| Beaufort Sea | Yes | Late 1993, Late 1996 |
| Atlantic Region: | | |
| North Atlantic | Yes | |
| Mid-Atlantic and South Atlantic. | Yes | Late 1994, Mid 1997. |
| Straits of Florida | Yes | |
| Gulf of Mexico: | | |
| Eastern Gulf | | |
| —North of 26° | Yes | Late 1994, Early 1997. |
| —South of 26° | Yes | |
| Central Gulf | Yes | Annually (Early). |
| Western Gulf | Yes | Annually (Mid). |
| Pacific Region: | Yes | |
| Southern California | Yes | Mid 1996. |
| Central California | Yes | |
| Northern California | Yes | |
| Washington-Oregon | Yes | |

*Actual dates depend upon the outcome of the Area Evaluation and Decision Process.

[FR Doc. 91–18349 Filed 7–31–91; 8:45 am]

BILLING CODE 4310–MR–M

[DES 91–20]

## Outer Continental Shelf; Availability of the Draft Environmental Impact Statement for the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997

The Minerals Management Service has prepared a draft Environmental Impact Statement (EIS) relating to the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

Information on the availability of the draft EIS can be obtained from: Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, telephone (907) 271–6010; Regional Director, Atlantic Region, Minerals Management Service, suite 1109, 381 Elden Street, Herndon, Virginia 22070–4817, telephone (703) 787–1113; Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–0557; Regional Director, Pacific Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010, telephone (805) 389–7502; and Chief, Environmental Projects Coordination Branch, Minerals Management Service, 381 Elden Street, MS 4320, Herndon, Virginia 22070–4817, telephone (703) 787–1674.

Copies of the draft EIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the draft EIS will be available may be obtained from the offices listed above.

In accordance with 30 CFR 256.2(b), public hearings relating to the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 are tentatively scheduled for the period of September 9–20, 1991, for the purpose of receiving comments relating to the adequacy of the draft EIS. The tentative locations of the hearings are as follows: Anchorage, Alaska; Santa Maria, California; Houston, Texas; New Orleans, Louisiana; Gulfport, Mississippi; Mobile, Alabama; Gulf Breeze, Florida; and Wilmington, North Carolina. The exact dates, times, and locations of the hearings will be announced by Federal Register Notice in the near future.

Comments resulting from reviews of the draft EIS and written materials prepared as part of testimony at the public hearings will be accepted until October 29, 1991. All comments should be mailed to the Director, Minerals Management Service, 381 Elden Street, MS 4320, Herndon, Virginia 22070–4817, Attention: Debra Purvis. Hand deliveries to the Department of the Interior may be made to Room 4230, 1849 C Street, NW., Washington, DC 20240. Envelopes or packages should be marked "Comprehensive Program draft EIS."

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

The comment period for the draft EIS for the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 closes October 29, 1991.

Dated: July 30, 1991.

**T. Gernhofer,**

*Associate Director for Offshore Minerals Management.*

Approved:

**Jonathan P. Deason,**

*Director, Office of Environmental Affairs.*

[FR Doc. 91–18425 Filed 7–31–91; 8:45 am]

BILLING CODE 4320–MR–M

## Office of Surface Mining Reclamation and Enforcement

## Extension of Comment Period on Draft Environmental Impact Statement

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

**ACTION:** Notice of the Extension of the Comment Period on a Draft Environmental Impact Statement.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement of the United States Department of the Interior is extending the public comment period on the Draft Environmental Impact Statement OSM–EIS–29 for the Proposed Revision to the Permanent Program Regulations implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977. The comment period is being extended to coincide with the comment period for a proposed revision to the permanent program regulations addressing the definition of valid existing rights recently published in the Federal Register.

**DATES:** The comment period on the Draft Environmental Impact Statement is extended until 5 p.m. Eastern time on September 16, 1991.

**ADDRESSES:** Copies of the Draft Environmental Impact Statement may be obtained by contacting the Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; telephone (202) 343–1476 or (FTS) 343–1476.

Written comments may be hand delivered to the Office of Surface Mining, Administrative Record, room 5131, 1100 L St. NW., Washington, DC; or mailed to the Office of Surface Mining, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Andrew DeVito, Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; telephone (202) 343–5150 or (FTS) 343–5150.

**SUPPLEMENTARY INFORMATION:** On April 19, 1991 (56 FR 16111), the Office of Surface Mining Reclamation and Enforcement (OSM) published a notice of availability of the Draft Environmental Impact Statement OSM–EIS–29 (DEIS) for a proposed revision to the permanent program regulations implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* On June 6, 1991 (56 FR 26144) OSM extended the public comment period on the DEIS until August 5, 1991. OSM is again extending the public comment period so that it will coincide with the comment period for the proposed revision to the permanent program regulations published in the **Federal Register** on July 18, 1991 (56 FR 33152). The proposed revision to the permanent program regulations addresses the issue of valid existing rights (VER) found under section 522(e) of SMCRA.

Section 522(e) of SMCRA prohibits, subject to VER, surface coal mining operations on lands within units of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and National Recreation Areas designated by act of Congress. In addition, surface coal mining operations for which it has not been determined that the owner has VER are prohibited (with certain exceptions) if they will adversely affect places listed on the National Register of Historic Places or any publicly owned park or if they are within a National Forest. Such operations also are prohibited within 100 feet of cemeteries and public roads and within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks.

The DEIS describes the environmental impacts that might result from amending the permanent program regulations at 30 CFR part 761 that concern VER. The regulatory options for the VER rulemaking are presented as alternatives in the DEIS which considers the cumulative and site-specific effects on the quality of the human environment that might occur as a result of coal mining under the various alternatives.

The DEIS also describes the environmental impacts that would result from amending regulations that address the application of the prohibitions of section 522(e) of SMCRA to the subsidence effects of underground coal mining. Commenters should be aware that since the issuance of the DEIS, the issue of whether and to what degree subsidence is covered by the mining prohibitions set forth in section 552(e) of SMCRA, has been resolved. See the notice of inquiry published on July 18, 1991 (56 FR 33170).

Dated: July 21, 1991.

**Brent Wahlquist,**

*Reclamation and Regulatory Policy.*

[FR Doc. 91–18311 Filed 7–31–91; 8:45 am]

**BILLING CODE 4310-05-M**

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–167; Sub-No. 1098X]**

### Consolidated Rail Corporation—Abandonment Exemption—in Baltimore, MD

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 0.16-mile line of railroad between valuation station 25+80±, near N. Haven Street, and valuation station 34+50±, near E. Monument Street (Loney's Lane Yard), in Baltimore, MD.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 31, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 12, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 21, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103–2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an evironmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 6, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 25, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 91. 18246 Filed 7–31–91; 8:45 am]

**BILLING CODE 7035-01-M**

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision of environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). An entity seeking a stay involving environmental concerr s is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7, and section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d) notice is hereby given that on July 19, 1991, a proposed Consent Decree in *United States* v. *Allied-Signal, Inc., et al.*, Civil Action No. 91–408–LON, was lodged with the United States District Court for the District of Delaware. The Consent Decree requires defendants to pay $210.00 in response costs incurred by the United States at the Tybouts Corner Landfill Superfund Site in New Castle County, Delaware.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Allied-Signal, Inc., et al.*, DOJ Ref. 90–7–1–143.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 844 King Street, Wilmington, Delaware 19801. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202–347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the Treasurer of the United States.

**Barry M. Hartman,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 91–18180 Filed 7–31–91 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. 9622(i) and with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent order in *United States* v. *BASF-Inmont Corporation, et al.*, Civil Action No. 91–40320, has been lodged with the United States District Court for the Eastern District of Michigan on July 18, 1991. The proposed consent order concerns cleanup of a hazardous waste site at the Metamora Landfill in Lapeer County, Michigan, by the thirty-five defendants. The proposed consent decree requires, *inter alia*, incineration of drummed waste and highly contaminated soils, installation of a groundwater monitoring and treatment system, remediation of residual soil contamination, and construction of a cap over the landfill. The United States Environmental Protection Agency ("U.S. EPA") will publish an explanation of significant differences, pursuant to 42 U.S.C. 9617(c), explaining that the proposed consent decree permits defendants the option of incinerating the waste and contaminated soils at an on-site incinerator, under a plan to be approved by U.S. EPA, or at an off-site incinerator. The Record of Decision of September 30, 1986, has selected off-site incineration.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *BASF-Inmont Corporation, et al.*, D.J. Ref. 90–11–3–289.

The proposed consent order may be examined at the office of the United States Attorney for the Eastern District of Michigan, 206 Federal Building, 600 Church Street, Flint, Michigan 48502, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**Barry M. Hartman,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 91–18181 Filed 7–31–91; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and section 122(d) and (i) of CERCLA, 42 U.S.C. 9622(d) and (i), notice is hereby given that on July 22, 1991, a consent decree in *United States* v. *BP America, Inc., et al.*, Civil Action No. 91–409, was lodged with the United States District Court for the District of Delaware.

The complaint filed by the United States at the time of lodging the consent decree, alleges, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, that defendants BP America, Inc., The Budd Company, Champlain Cable Corporation, Chrysler Corporation, Day International Corporation, E.I. duPont de Nemours & Co., Inc., General Motors Corporation, Hercules Incorporated, ICI Americas, Inc., Motor Wheel Corporation, New Castle County, Delaware, SCA Services, Inc., Standard Chlorine of Delaware, Inc., Stauffer Chemical Co., Waste Management of Delaware, Inc., Westvaco Corporation, and Wilmington Chemical Corporation (the "Settlors") are liable for an injunction, damages resulting from injury, destruction, or loss of natural resources, and response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Army Creek Superfund Site located in New Castle County, Delaware (the Site"). The complaint further states that all defendants, except the County, SCA and WMDI, arranged for the transport to and disposal of hazardous substances at the Site, and that SCA and WMDI selected the Site and transported to and disposed of hazardous substances at the Site. The complaint also alleges that the County was the owner and operator of the Site.

In the complaint, the United States, on behalf of the Environmental Protection Agency, sought a judgment against the defendants jointly and severally for implementation of the remedies selected in EPA's Records of Decision ("ROD") dated September 30, 1986 and June 29, 1990, which provide for a surface cap and gas venting system, and a system for pumping, treating and monitoring contaminated groundwater; reimbursement of $1.4 million in past response costs under section 107(a) of CERCLA, 42 U.S.C. 9607(a); and a determination under Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that any

finding of liability would be binding in any subsequent action for further response costs. In addition, the United States, on behalf of the Secretary of Commerce and the Secretary of Interior, sought damages totalling $1.1 million resulting from injury, destruction, or loss of natural resources. The State of Delaware, which is a party to the consent decree, has filed a separate complaint.

In the consent decree, the Settlors have agreed, *inter alia*, to implement the remedies selected in the RODs dated September 30, 1986 and June 29, 1990, at a total cost of approximately $25 million. They have also agreed to pay $1 million in past costs to the Hazardous Substances Trust Fund; pay costs of oversight and operation and maintenance; and pay damages of $800,000 for injuries to natural resources. The Settlors' agreement to conduct the remedial action is conditioned upon the United States' agreement, pursuant to section 122(b)(1) of CERCLA, 42 U.S.C. 9622(b)(1), to reimburse the Settlors up to 10% of the cost of the surface remedy, not to exceed $2 million, and up to 40% of the cost of the groundwater remedy, not to exceed $1.976 million.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *BP America, Inc., et al.*, DOJ Ref. No. 90–11–2–411. The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, room 5110, Wilmington, Delaware. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044 (202–347–7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $125 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

**Barry M. Hartman,**

*Acting Assistant Attorney General, Environmental and Natural Resources Division.*

[FR Doc. 91–18182 Filed 7–31–91; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 C.F.R. 50.7, and section 122(d)(2) of CERCLA, 42 U.S.C. 106 and 107 notice is hereby given that on June 20, 1991 a proposed Consent Decree in *United States* v. *Georgia-Pacific Corporation, et al.*, Civil Action No. 91–5063, was lodged with the United States District Court for the District of South Dakota. The Consent Decree requires defendant to pay $200,000.00 in past response costs incurred by the United States at the "Whitewood Custom Treaters" Superfund Site in Whitewood, Lawrence County, South Dakota.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Georgia-Pacific Corporation et al.*, DOJ Ref. #90–11–3–628.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202–347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Barry M. Hartman,**

*Acting Assistant Attorney General, Environmental and Natural Resources Division.*

[FR Doc. 91–18183 Filed 7–31–91; 8:45 am]

BILLING CODE 4410–01–M

## Membership of the Department of Justice's Senior Executive Service (SES) Performance Review Boards

**AGENCY:** Department of Justice.

**ACTION:** Notice of the Department of Justice's 1991 SES Performance Review Boards.

**SUMMARY:** Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purpose of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals/recertifications, and bonuses. These Boards will make recommendations to the Deputy Attorney General regarding the final ratings to be assigned, recertification of SES career appointees, and SES bonuses to be awarded.

**FOR FURTHER INFORMATION CONTACT:** Mr. John C. Vail, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530 Telephone: (202) 514–6788.

**Paul W. Mathwin,**

*Executive Secretary, Senior Executive Resources Board.*

**1991 Performance Review Board Members**

*Antitrust Division*

I. Curtis Jernigan, Chief, Economic Regulatory Section
John T. Orr, Jr., Chief, Atlanta Office
Neil E. Roberts, Chief, Legal Policy Section

*Bureau of Prisons*

Wally Cheney, Assistant Director, Office of the General Counsel
Doug Lansing, Assistant Director, Human Resource Management
Wade Houk, Assistant Director, Administration Division
Kathleen Hawk, Assistant Director, Program Review Division

*Civil Division*

David M. Cohen, Director, Commercial Litigation Branch
Brook Hedge, Director, Federal Programs Branch
Kenneth L. Zwick, Director, Office of Management Programs

*Civil Rights Division*

James S. Angus, Chief, Employment Litigation Section
David K. Flynn, Chief, Appellate Section
John L. Wodatch, Director, Office on the Americans With Disabilities Act

*Criminal Division*

Laurence A. Urgenson, Chief, Fraud Section
Roger A. Pauley, Director, Office of Legislation
James S. Reynolds, Acting Chief, Terrorism and Violent Crime Section

*Executive Office for U.S. Attorneys*

Richard L. DeHaan, Deputy Director

*Immigration and Naturalization Service*

Joan C. Higgins, Assistant Commissioner for Detention and Deportation

Stanley E. McKinley, Regional Commissioner, Eastern Region
John R. Schroeder, Assistant Commissioner for Employer Labor Relations
Paul W. Virtue, Principal Deputy General Counsel

*INTERPOL*

Charles S. Saphos, General Counsel, Presently on detail from the Criminal Division

*Justice Management Division*

Robert F. Diegeleman, Director, Management and Planning Staff
Warren Oser, Senior Policy Advisor
William L. Vann, Procurement Executive

*Environment and Natural Resources Division*

Margaret N. Strand, Chief, Environmental Defense Section
James Kilbourne, Chief, Wildlife and Marine Resources Section
William J. Kollins, Chief, Land Acquisition Section

*Office of Justice Programs*

Benjamin H. Renshaw, Deputy Director, Bureau of Justice Statistics

*Tax Division*

Stanley F. Krysa, Director, Criminal Enforcement Section
Stephen G. Fuerth, Chief, Civil Trial Section, Western Region
Robert E. Lindsay, Chief, Criminal Appeals and Tax Enforcement Policy Section

*U.S. Marshals Service*

Kenneth Holecko, Associate Director for Human Resources

[FR Doc. 91-18184 Filed 7-31-91; 8:45 am]
BILLING CODE 4410-01-M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./ General Instrument Corporation/ Scientific-Atlanta, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), General Instrument Corporation ("GI") and Scientific-Atlanta Inc. ("S–A") on June 21, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties are the following:

Cable Television Laboratories, Inc., 1050 Walnut Street, suite 500, Boulder, Colorado 80302
General Instrument Corporation, 2200 Byberry Road, Hatboro, Pennsylvania 19040
Scientific-Atlanta, Inc., One Technology Park, Atlanta, Georgia 30092–2967

The area of planned activity is cooperation in the education of the cable industry and the public concerning the availability of, and potential for, digital video transmission and compression technologies in the distribution and delivery of cable television programming. The parties also plan to cooperate in demonstrations of: (a) The distribution of compressed, digitally-transmitted NTSC signals to cable television systems and (b) the delivery and telecast of advanced television (ATV) programming by the cable industry. These demonstrations will be coordinated by CableLabs using high definition television (HDTV) and other ATV proponent television systems that wish to participate.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 91-18185 Filed 7-31-91; 8:45 am]
BILLING CODE 4410-01-M

### Notice Pursuant to the National Cooperative Research Act of 1984—OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("The Act"), OSI/ Network Management Forum ("the Forum") on June 28, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing an addition to its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting recovery of the antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615). On December 23, 1988, March 23, 1989, July 3, 1989, September 28, 1989, November 22, 1989, January 29, 1990, March 20, 1990, May 7, 1990, July 20, 1990, February 27, 1991, and April 17, 1991, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department published notices in the **Federal Register** pursuant to section 6(b) on January 26, 1989 (54 FR 3870), April 25, 1989 (54 FR 17834), August 4 1989 (54 FR 32141), October 26, 1989 (54 FR 43631), January 10, 1990 (55 FR 926), February 28, 1990 (55 FR 7046), April 23, 1990 (55 FR 15295), May 24, 1990 (55 FR 21449), August 20, 1990 (55 FR 33967), April 3, 1991 (56 FR 13655), and May 23, 1991 (56 FR 23723), respectively.

The identity of the additional party to the venture is given below:

**Associate Member**

Royal PTT Nederland N.V. P.O. Box 30150, 2500 GD Den Haag, The Netherlands

**John W. Clark,**

*Acting Director of Operations Antitrust Division.*

[FR Doc. 91-18186 Filed 7-31-91; 8:45 am]
BILLING CODE 4410-01-M

### Notice Pursuant to the National Cooperative Research Act of 1964 Recording Industry Association of America, Inc.

Notice is hereby given that, on May 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984 15 U.S.C. 4301 *et seq.* ("the Act"), the Recording Industry Association of America, Inc. ("RIAA"), for itself and on behalf of its member companies, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) additions to its membership, (2) commencement of the final phase of the venture, (3) the identities of the parties to the venture, and (4) the nature and objective of the venture.

The following parties have been added as members of RIAA and have joined the venture, effective April 1, 1991: ABC Group; ABKCO Music & Records: Blue Note Records; CSP; Columbia Group; Epic Group; Giant Records; K-tel International, Inc.; Masterworks; Mercury Records; PDS Records; Private Music; RCA Records Label; R. Francis Entertainment; Showtime Records; Sony Music; Telarc; Virgin Records; WEA; Word; and Whitewing Records.

The parties to the venture are RIAA, for itself and on behalf of its member companies, and Bolt, Beranek and Newman Systems and Technologies Corporation.

The nature and objective of the venture is to undertake research, development, and evaluation of copyright protection and music identification technology. The parties entered the final phase of the venture effective April 2, 1991. No other changes have been made in either the membership or planned activities of RIAA.

On March 27, 1989, RIAA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 1, 1989, 54 FR 18607. RIAA filed notifications disclosing changes in its membership on October 30, 1989, and April 27, 1990, notices of which were published by the Department on December 8, 1989, 54 FR 50661, and June 5, 1990, 55 FR 22965, respectively.

**John W. Clark,**

*Acting Director of Operations, Antitrust Division.*

[FR Doc. 91-18187 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984 Software Productivity Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), Software Productivity Consortium ("SPC") on march 26, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Loral Aerospace Corporation has been admitted as a member of SPC effective January 1, 1991. McDonnell Douglas Corporation withdrew its membership on December 31, 1990, and Ford Aerospace Company withdrew its membership as of December 31, 1990. Except as indicated above, no other changes have been made in either the membership or planned activity of SPC.

On December 21, 1984, SPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). Since then, SPC filed additional notifications on April 23, 1985, September 24, 1985, December 10, 1985, February 13, 1986, and November 30, 1989, identifying changes in its membership, and the Justice Department published notice of these changes in the **Federal Register** on May 21, 1985 (50 FR 20954), October 22, 1985 (50 FR 42786), January 13, 1986 (51 FR 1450), March 11, 1986 (51 FR 8373), and January 10, 1990 (55 FR 926), respectively. SPC also filed additional notifications on December 19, 1988, December 27, 1988, March 23, 1989, and November 7, 1990, notices of which the Department published on January 31, 1989 (54 FR 4922), May 4, 1989 (54 FR 19256-57), and December 10, 1990 (55 FR 50787), respectively.

**John W. Clark,**

*Acting Director of Operations, Antitrust Division.*

[FR Doc. 91-18188 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 91-68]**

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

**DATES:** Comments are requested by September 3, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

**ADDRESSES:** Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0009) Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

**Reports**

*Title:* New Technology Transmittal.
*OMB Number:* 2700-0009.
*Type of Request:* Extension.
*Frequency of Report:* As required.
*Type of Respondent:* Businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
*Respondents:* 100
*Annual Responses:* 2000.
*Annual Burden Hours:* 500.
*Abstact-Need/Uses:* Reporting is required under contract provisions.

Dated: July 25, 1991.

**D. A. Gerstner,**

*Director, IRM Policy Division.*

[FR Doc. 91-18289 Filed 7-31-91; 8:45 am]

BILLING CODE 7510-01-M

**[Notice 91-69]**

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

**DATES:** Comments are requested by September 3, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

**ADDRESSES:** Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and

Budget, Paperwork Reduction Project (2700–0065), Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (703) 271–5541.

**Reports**

*Title:* Radio Program Survey and Promotion.

*OMB Number:* 2700–0065.

*Type of Request:* Extension.

*Frequency of Report:* Semi-annually.

*Type of Respondent:* Businesses or other for profit, Non-profit institutions, Small business or organizations.

*Number of Respondents:* 1400.

*Responses per Respondent:* 2.

*Annual Responses:* 2800.

*Hours per Response:* .10.

*Annual Burden Hours:* 280.

*Abstract-Need/Uses:* This form, NHQ Div. 715, will be used to periodically survey and monitor the use of NASA's "Space Story" and "Frontiers" programs that have been distributed to radio stations throughout the country. It provides the necessary information for NASA to measure the effectiveness of these public service programs.

Dated: July 25, 1991.

**D. A. Gerstner,**

*Director, IRM Policy Division.*

[FR Doc. 91–18290 Filed 7–31–91; 8:45 am]

**BILLING CODE 7510–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–315 and 50–316]**

## Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary Exemption from certain requirements of 10 CFR part 50, appendix A, General Design Criterion 2, to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant a temporary Exemption from certain requirements of General Design Criterion (GDC) 2 of appendix A to 10 CFR part 50. On July 19, 1991, the licensee requested a temporary Exemption from GDC 2, which requires in part that "Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquacks, tornadoes . . . . without loss of capability to perform their safety functions." Specifically, the emergency diesel generator (EDG) combustion air intake piping, exhaust piping, and ventilation supply piping would not be required to withstand the effects of a tornado. This Exemption would be in effect until the licesee completed modifications to strengthen the affected EDG ventilation components as described in their July 19, 1991 letter, but no later than August 17, 1991.

**The Need for the Proposed Action**

Technical Specification (TS) 3.8.1.1.b for both Units 1 and 2 of the Cook Nuclear Plant requires that two diesel generators be operable during Modes 1 through 4. During a review of the electrical distribution system, the licensee identified a low probability event, a tornado, which has the potential for requiring human intervention in order for the diesel generators to be considered operable. Although the diesel generators meet the TS surveillance requirements and would operate for almost all event, the need for human intervention makes the diesel generators' operability questionable for the single event. The specific items in question are the ventilation ductwork which supplies cooling air to the rooms in which the diesel generators are located, the intake silencer for the diesel generator combustion air, and the diesel generator exhaust piping.

In the highly unlikely event that a tornado passes over the Cook Nuclear Plant, the intake ductwork supplying the diesel generator room ventilation may be subjected to an unacceptable decrease in internal pressure. If the ventilation system is not running at the time the tornado passes, a damper in the line would be closed, effectively isolating the internal area of the ducting from the diesel generator room. Because the ducting passes through the diesel generator room and the room would not be vented, a differential pressure would be imposed across the ducting upstream of the damper. The licensee has been unable to locate documentation which demonstrates the ability of the ductwork to survive the differential pressure associated with this tornado condition. The licensee's preliminary assessment concluded that duct collapse may be possible. A similar concern exists for the diesel generator combustion air intake silencer located inside the diesel generator room.

Additionally, the diesel generator is supplied with combustion air from the atmosphere and exhausts combustion gases to the atmosphere. Both the supply and exhaust piping have components, which are located outside of the building. These components, exhaust silencers, intake filters and piping, could be exposed to high wind forces. The Licensee has been unable to demonstrate the ability of these components to withstand the forces associated with the wind loadings. Because of the lack of sufficient objective documentation to substantiate EDG operability during a tornado, the licensee declared the EDGs inoperable at approximately 12:15 p.m., e.d.t. on July 18, 1991. At 2:20 p.m., e.d.t., John Zwolinski, Assistant Director for Region III Reactors, Office of Nuclear Reactor Regulation, granted the licensee a temporary waiver of compliance from TS 3.8.1.1.b, based upon compensatory actions taken by the licensee and the low probability ($2 \times 10^{-4}$ per year) of occurence of a tornado of sufficient magnitude to be of concern. In his letter to the licensee dated July 19, 1991, Mr. Zwolinski indicated that the licensee should request a temporary Exemption from certain requirements of 10 CFR part 50, appendix A, GDC 2, until corrective actions could be completed to demonstrate compliance, which was anticipated to be no later than August 17, 1991.

*Environmental Impacts of the Proposed Action*

The proposed Exemption would provide temporary relief from the requirements of GDC 2 that the portions of the EDG ventilation system described above would be able to withstand the effects of a tornado. This relief would be temporary and remain in effect until the licensee had completed corrective actions necessary to demonstrate that the affected components of the EDG ventilation system would be able to withstand the effects of a tornado or until August 17, 1991, whichever is sooner.

The licensee identified and has implemented corrective actions which will alleviate concerns associated with vacuum-induced pressure differential across the ventilation ductwork and the combustion air intake silencer. Additionally, the EDG exhaust silencer, combustion air intake, and ventilation intake components located externally to the building are afforded some protection and shielding from tornado effects by their proximity with respect to structures which are designed to withstand tornadoes. The licensee has begun implementation of modifications to exposed portions of the EDG ventilation system which includes the

use of cables to provide additional structural support and removing a portion of the ventilation intake which protrudes outside the building. These modifications will be completed on or before August 17, 1991.

The licensee has also determined from the preliminary results of their probabilistic risk assessment (PRA) that tornadoes resulting in 90 mph winds or greater occur with a low probability ($2\times10^{-4}$ per year) within a 125 mile radius of the plant. Further, the majority of the tornadoes occur in the months of April, May, and June. The probability that a tornado would cause both a loss of off-site power and loss of the EDGs by damaging the ventilation system is even lower. The licensee has further stated that there is no significant change in the types of effluents that may be released off-site and there is no significant increase in the allowable individual or cumulative occupational radiation exposure associated with the proposed action.

Based on the above, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed temporary Exemption.

With regard to potential non-radiological impacts, the proposed temporary Exemption does not effect a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed Exemption.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested Exemption. This would not reduce environmental impacts of plant operation and would result in increased operational burden on the licensee and the need to subject the plant to additional transients and unnecessary shutdown.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

*Agencies and Persons Consulted*

The NRC staff did not consult other agencies in making its decision on this proposed action.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated July 19, 1991. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 26th day of July 1991.

For the Nuclear Regulatory Commission.

**Brent Clayton,**

*Acting Director, Project Directorate III–I, Division of Reactor Projects—III, IV, V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91–18284 Filed 7–31–91; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–72]**

## Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of and Disposition of Component Parts University of Utah

The U.S. Nuclear Regulatory Commission is considering issuance of an Order authorizing the University of Utah (UU) to dismantle their AGN–201M research reactor facility located on the licensee's campus in Salt Lake City, Utah and to dispose of the reactor components in accordance with the application dated July 17, 1990, as supplemented on July 18, 1990 and June 12, 1991.

**Environmental Assessment**

*Identification of Proposed Action*

By application dated July 17, 1990, as supplemented, UU requested authorization to decontaminate and dismantle the AGN–201M research reactor, to dispose of its components parts in accordance with the proposed decommissioning plan, and to terminate Facility Operating License No. R–25. The University of Utah AGN–201M research reactor was shut down in February 1985, and has not operated since then. Following reactor shutdown the fuel was removed from the core and shipped to a Department of Energy (DOE) Facility as directed by the DOE in accordance with DOE, NRC, and DOT requirements.

Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Components Parts and Terminating Facility License" published in the **Federal Register** on May 9, 1991 (56 FR 21508). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

*Need for Proposed Action*

In order to prepare the property for unrestricted access and use, the dismantling and decontamination activities proposed by the University of Utah must be accomplished.

*Environmental Impact of the Proposed Action*

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The UU staff has calculated that the collective dose equivalent to the UU staff and public for the project will be less than 0.5 person-rem.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, most contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA). Components not removed have been transferred to the University's byproduct material or TRIGA reactor licenses.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the University of Utah facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

*Alternative Use of Resources*

The only alternative to the proposed dismantling and decontamination activities is to maintain possession of the reactor. This approach would include monitoring and reporting for the duration of the safe storage period. However, the University of Utah intends to use the area for other academic purposes.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated July 17, 1990, as supplemented and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 23rd day of July 1991.

For the Nuclear Regulatory Commission.

**Richard F. Dudley,**

*Acting Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-18285 Filed 7-31-91; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-262]**

## Brigham Young University; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of orders authorizing Brigham Young University (the licensee) to dismantle the reactor facility and dispose of the component parts, and authorizing termination of Facility License No. R-109, in accordance with the licensee's application dated June 28, 1990, as supplemented on July 2, 1991.

The first of these orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 3, 1991, the licensee may file a request for a hearing with respect to issuance of the subject orders 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 petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and 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 20555. 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 fifteen (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 fifteen (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 orders 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.

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, attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in

Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; Brigham Young University; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Eugene H. Bramhall, General Counsel, A–357 ASB, Brigham Young Univerity, Provo, Utah 84602, attorney for 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 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 licensee's application dated June 28, 1990, as supplemented on July 2, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 23rd day of July, 1991.

For the Nuclear Regulatory Commission.

**Richard F. Dudley,**

*Acting Director Non-Power Reactors, Decommissioning and Environmental Project Directorate Division of Advanced Reactors and Special Projects Office of Nuclear Reactor Regulation.*

[FR Doc. 91–18286 Filed 7–31–91; 8:45 am]

**BILLING CODE 7590–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–29489; File No. SR–CBOE–91–24]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Capped Index Options

July 25, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 6, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to allow the Exchange to list Capped Index Options ("Capped Index Option" or "Option"), defined in the proposal as options on a specific market index that are exercised automatically when the option's "cap price" (the strike price plus the cap interval for a call or the strike price minus the cap interval for a put) is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value for puts. The proposed call Options are the equivalent of vertical bull spreads traded as a single security (i.e., the combination of one long an one short call position with the same expiration but where the strike price of the short call is higher than the strike price of the long call). Conversely, the proposed put options are the equivalent of vertical bear spreads traded as a single security (*i.e.*, the combination of one long put and one short put position with the same expiration, but where the strike price of the short put is lower than the strike price of the long put). Initially, the CBOE proposes to list Capped Index Options on the Standard & Poor's 100 ("OEX") Index. The text of the proposal is attached as Exhibit A.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The CBOE proposes to amend its rules to allow the Exchange to list Capped Index Options, defined in the proposal as options on a specific market index that are exercised automatically at any time prior to expiration when the option's "cap price" is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value for puts. The cap price, which is assigned when the Option is listed, is the strike price plus the cap interval for a call or the strike price minus the cap interval for a put. The proposed options will feature Automatic European Exercise, which provides that they will be exercised automatically when the cap price is reached. If the Options fail to reach the cap price, they may be exercised only on the last business day prior to expiration. The cap price establishes a pre-defined maximum value for the proposed options.

At this time, the CBOE proposes only to list Capped Index Options on the OEX. Initially, the cap interval for the Capped OEX options will be $30.00, but it may be modified by the Exchange's Product Development Committee.

The CBOE proposes to list Capped Index Options in order to provide the investing public with a simpler means to use options. The CBOE believes that this objective will be accomplished by giving brokers and customers an option which has a pre-defined maximum value regardless of moves in the market value of the underlying index. Because the maximum gain or loss will be understood easily, the proposed Options will be a relatively low risk security compared to regular options.

As described above, the call Options are equivalent to vertical bull spreads and the put Options are equivalent to vertical bear spreads.

By packaging the spread in one transaction, the Capped Index Options will offer investors a simple, more efficient method of executing spread transactions, without the risk of having the short leg exercised. In addition, transaction-related expenses will be reduced.

The Automatic European Exercise feature will also decrease the risk level of the proposed Options to options writers. Because the Options will be exercisable only at expiration, unless the index cap is reached and the Option is exercised automatically, there is limited risk of early exercise. For example, a four month $30 capped OEX call option with a 360 strike and a cap price of 390 (360 plus $30 cap interval) allows investors to benefit from up to a 30 point move in the index. This Capped Index Option will be exercised automatically when the OEX closes at

or above 390. The CBOE also believes that the Options should be attractive to the member firms that have restricted the use of options by their customers, in that the profit/loss is limited for each option contract.

The CBOE proposes to amend Exchange Rule 24.5, Exercise Limits, by adding Interpretation .02. Interpretation .02 will exclude Capped Index Options from the calculation of exercise limits for index option contracts. This amendment will allow members to maintain their position in index options even if the member's Option position is exercised automatically because the cap price has been reached. For example, during the week prior to the June expiration of options, members are limited to a position in June options of 15,000 contracts and to an exercise limit that is equal to that amount. However, a member's position in Capped Index Options with expirations beyond June could be exercised automatically if the cap price is reached. The proposed amendment will allow the members to continue to hold up to 15,000 contracts in June options even if the member's Option position is exercised.

The CBOE also proposes to add Interpretation .03 to Rule 24.9, Terms of Option Contracts. Interpretation .03 specifies an initial cap interval of $30.00, which may be modified later by the Product Development Committee. In addition, Interpretation .03 provides that (i) One at-the-money call and put will be listed; (ii) the Product Development Committee may add new series to accommodate large moves in the underlying index; and (iii) series will be listed with expiration months four months into the future on an every other month basis. The Product Development Committee may add additional series.

Interpretation .03 reflects the uniqueness of the Options. The listing of specific series with an initial cap interval of $30.00 at two month intervals is a result of the Exchange's review of the needs of the members and customers who will trade Capped Index Options. In addition, the CBOE believes that it will avoid strike price proliferation by limiting the introduction of the amount of Options.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

*(b) Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by August 22, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Exhibit A**

*Proposed Rule Change—Chicago Board Options Exchange, Incorporated*

Italicizing reflects additions, brackets deletions.

Rule 24.1 Definitions

(a) through (j) No change.

*Capped Index Option*

*(k) The term "capped index option" is an Automatic European Option on a specific market index that is automatically exercised anytime prior to its expiration when the cap price is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value.*

*Cap Price*

*(l) The term "cap price" means the strike price plus the cap interval for a call or the strike price minus the cap interval for a put. The cap price is assigned to the capped index option when listed.*

*Automatic European Option*

*(m) The term "Automatic European Option" means a European option contract that is automatically exercised when the cap price is reached. If this does not occur, it can only be exercised on the last business day prior to the day it expires.*

Rule 24.5 Exercise Limits

No change.

* * * Interpretations and Policies:

.01 No change.

*.02 Capped Index Options will not be included when calculating exercise limits for index option contracts.*

Rule 24.9 Terms of Option Contracts

(a) through (d) No change.

* * * Interpretations and Policies:

*.01 and .02 No change.*

*.03 For capped index options, the procedures for adding strike prices shall be as follows:*

*a. The cap interval shall initially be $30.00 but may be modified pursuant to such a determination by the Product Development Committee.*

*b. Initially, one at-the-money call and put will be listed.*

*c. New series may be added to accommodate large moves in the index pursuant to the authority of the Product Development Committee.*

*d. Series will be listed with expiration months four months into the future on an every other month basis. Additional series may be added pursuant to the directive of the Product Development Committee.*

[FR Doc. 91-18196 Filed 7-31-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29493; File No. SR-MSTC-91-03]

## Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Establishing the Institutional Participant Services Program

July 26, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934,[1] notice is hereby given that on July 9, 1991, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MSTC. The Commision is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission is also granting accelerated approval of the proposed rule change on a temporary basis through January 31, 1992.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes (i) the Institutional Participant Services Program ("Program") and (ii) a new category of participants ("Institutions").[2]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, or the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Commission has approved the proposed rule change on a temporary basis until July 31, 1991 ("Temporary Approval Period").[3] The rationale for initially approving the rule change on a temporary basis was to provide MSTC with the opportunity to formulate more definitive financial and operational standards for Institutions that desire to participate in the Program. Subsequently, on December 26, 1990, MSTC filed a proposed rule change (SR-MSTC-90-10) which requested permanent approval of the Program and proposed more definitive standards of participation and financial and operational capabilities for Institutions. To provide the Commission with the opportunity to review these standards while providing continuity of service to Institutions that currently participate in the Program, this proposed rule change requests that the Commission extend the Program under the terms of the Temporary Approval Orders through January 31, 1992.[4]

MSTC believes that the proposed rule change is consistent with section 17A of the Act because it will promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities by providing Institutions with the opportunity to participate directly in MSTC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

MSTC has not received any comments from participants of the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

MSTC requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit MSTC to offer continuity of service to Institutions that participate in the Program while providing the Commission with sufficient time to analyze the more definitive standards of participation and financial operational capability recently proposed by MSTC.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular with the requirements of sections 17A(b)(3) (A) and (F) of the Act.[5] Those sections require that the rules and organizational structure of a clearing agency promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities which are under the clearing agency's custody and control. The Commission believes that MSTC's proposal will help achieve these requirements by providing Institutions with the opportunity to participate directly in MSTC.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments were received on the proposals approved in the Temporary Approval Orders, which were identical in substance to this proposed rule change. Further, the Commission notes that the Program has operated without incident during the Temporary Approval Period. Thus, accelerated approval of the proposed rule change on a temporary basis will permit MSTC to provide continuity of service to those Institutions that currently participate in the Program while the Commission reviews MSTC's proposed permanent standards of financial and operational capabilities for such Institutions.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR-MSTC-91-03

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[1] 15 U.S.C. 78s(b).

[2] Attached as Exhibit A and Exhibit B, respectively, to Securities Exchange Act Release No. 28844 (February 1, 1991), 56 FR 5035 (File No. SR-MSTC-91-01) are the text of the proposed rule change and MSTC's procedures for the Program.

[3] Securities Exchange Act Release Nos. 27752 (March 1, 1990), 55 FR 8271 (File No. SR-MSTC-89-05) and 28844 (February 1, 1991), 56 FR 5035 (File No. SR-MSTC-91-01) ("Temporary Approval Orders").

[4] For a complete description of the services offered under the Program and the current standards of financial and operational capabilities for Institutions under the Program, see Temporary Approval Orders.

[5] 15 U.S.C. 78q-1(b)(3) (A) and (F).

and should be submitted by August 22, 1991.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–MSTC–91–03) be, and hereby is, approved on a temporary basis through January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–18274 Filed 7–31–91; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–29492 ; File No. SR–NYSE–91–09]**

## Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

July 26, 1991.

In the matter of Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Overnight Comparison System That Will Permit: (1) Security Position Movements, and (2) the Comparison of Cash "Ex-Clearing House" Transactions.

On March 29, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change under Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on May 9, 1991, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

### I. Description

The proposed rule change will authorize NYSE to add two electronic enhancements to its Overnight Comparision System ("OCS").[3] As discussed below, the enhancements will: (1) Permit clearing member participants in the OCS Correction System [4] to transfer open securities positions to other clearing members ("Step-Out-Service"); and (2) permit automated comparison of trades executed for "cash," whereas previously such trades have been compared pursuant to arrangements between trading parties and not submitted to a clearing agency (*i.e.,* ex-clearing house).[5]

*A. The Step-Out Service*

The proposed rule change will authorize NYSE to offer the clearing community a new service known as the "Step-Out Service" ("SOS"). SOS will apply to all stock trades in NYSE-listed stocks,[6] but SOS initially will not apply to trades in bonds or other securities.[7] The NYSE states that SOS will enable the Exchange's clearing members, by pressing keys on a computer terminal, to issue instructions to a qualified clearing agency [8] for the transfer of open contractual commitments between the members' clearing accounts.[9] Specifically, SOS will permit all or part of an open stock transaction to be transferred electronically from one clearing firm's account to another clearing firm's account prior to settlement of the trade.[10]

Any NYSE member organization using OCS, meaning every NYSE clearing firm, will be eligible to use SOS. In effect, the Exchange is implementing an electronic mail service for step-out movements among its clearing members. As noted, SOS will be an adjunct to the Exchange's Correction System, but the Correction System and SOS will not interface.[11]

The NYSE clearing members that participate in SOS will be able to enter records on their SOS terminal screens that will provide the identity of the security, the number of shares, price, and counter clearing firm. The counter, or receiving, participant may affirm, reject, or leave an item unaffirmed.[12] At the end of each trading day, the Exchange will transmit affirmed items to the appropriate qualified clearing agency where applicable credits and debits will be entered in the clearing firms' accounts.

Under the proposal, the appropriate qualified clearing agency will merge the affirmed items into the normal clearance and settlement cycles. The Exchange believes that by allowing these entries to be merged into the clearance cycle with all other transactions, the clearing members can accommodate their business requirements through the normal comparison vehicles at a qualified clearing agency. The Exchange believes that this should add to the efficiency of the comparison and clearing processes without adding to expenses.[13]

The NYSE states that there are several routine postexecution situations where clearing members may want to transfer open securities positions to other clearing members. Examples include situations where: (1) An institutional customer want to allocate executions among two or more Exchange clearing members, (2) a

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b).

[2] Securities Exchange Act Release No. 29156 (May 1, 1991), 56 FR 21514.

[3] OCS is a major automated system used by NYSE in its post-trade processing of securities transactions. While OCS provides several electronic services, its principal function is to match the buy-side and sell-side of trades in order to produce compared trades. For information on OCS, see Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 ([File No. SR–NYSE–88–36]. [Mr. ]

[4] The "Correction System" is a major component of OCS. For information on the Correction System, see Securities Exchange Act Release No. 26773 (May 1, 1989), 54 FR 20227 (File No. SR–NYSE–89–03).

[5] See NYSE Rule 133. See also NYSE Rules 131–132.

[6] Under NYSE rules, the term "stock" includes stocks, rights, and warrants. NYSE Rule 4.

The proposed rule change presumes that by limiting the use of SOS to trades in NYSE-listed stocks and to NYSE clearing members, SOS as a practical matter will apply only to trades executed on the Exchange's trading floor. Nevertheless, technically, NYSE clearing members will be able to use SOS for position movements of any trades in NYSE-listed stocks, even if executed on another exchange or over-the-counter. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division of Market Regulation ("Division", SEC (June 5, 1991).

[7] NYSE has stated in its filing that if it should desire to add other securities (*e.g.,* bonds) to SOS, it will submit another rule proposal to the Commission under section 19(b) of the Act.

[8] "Qualified clearing agency" is defined in NYSE Rule 132.10.

[9] While technically SOS could accommodate a trade with any type of settlement terms (*e.g.,* cash, next day, seller's option, etc.), the Exchange believes that, for a variety of reasons involving routine business practices, SOS will be used almost exclusively for regular way trades (*i.e.,* trades that settle on the fifth business day after trade date). Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (May 31, 1991).

[10] Such a transfer is referred to as a "step-out" or a "flip." The term "flip" also may be used to mean the movement of an open securities position between clearing agencies. For the purposes of this filing, however, "step-out" and "flip" are being used to mean transfers of open securities positions between broker-dealers (*i.e.,* between NYSE clearing members) and not transfers between clearing agencies. Telephone converstation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 5, 1991).

[11] SOS will have no execution capacity, and the size of a trade that is stepped-out cannot be expanded within SOS. Also SOS, as part of the NYSE's comparison cycle, will be subject to review by the Exchange's audit trail and market surveillance units. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (April 26, 1991).

[12] There can be no step-out of an item within SOS unless the item is affirmed by the receiving clearing member. *Id.*

[13] While, technically, the step-out procedure is independent of trade comparison, NYSE estimates that 99% of step-outs occur after comparison, usually on T+1. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 6, 1991).

clearing member want to "give-up" (*i.e.*, substitute) another clearing member for itself after the original comparison has been completed, and (3) a clearing member's customer want to combine several trades in the same stock with different contract prices into one step out trade with an average price rather than have several contract prices.[14]

The Exchange has stated in the filing that, in accord with its existing rules, the use of SOS and any related failure of trade comparison or failure to receive or delivery securities will have no effect on the terms of any original securities contract or on the liabilities of the original parties.[15] Furthermore, the Exchange has determined that the per-item usage fee for SOS will be $0.20 instead of the usual OCS per-item usage fee of $0.40. The Exchange has stated that a difference in fees is justified because SOS will utilize only a portion of OCS's capabilities.[16]

*B. Proposed Comparison of Cash "Ex-Clearing House" Transactions*

The proposed rule change would permit NYSE members to compare [17] "ex-clearing" trades [18] among themselves through OCS. These trades would not be forwarded to NSCC or another clearing agency for settlement.

In March 1989, the Commission approved the NYSE's Rule 130.[19] That rule, which was to be implemented within OCS over the eighteen months following its approval, established the principle that "regular way" transactions [20] in listed stocks, rights, and warrants must be compared or closed out within one business day after the trade date (*i.e.*, "T+1"). The "T+1" OCS program became fully effective on August 6, 1990.[21]

Initially, the use of OCS was limited to trades for regular way settlement. Subsequently, the Exchange requested and received approval from the Commission to use OCS for stock trades that settle on a "next day" and "seller's option" basis.[22] Currently, ex-clearing house trades, which mainly include "cash" or "same day" delivery trades,[23] have no access to OCS.[24]

Cash trades were not included in the previous OCS rule proposals because qualified clearing agencies could not compare trades on a basis that would permit delivery of securities in compliance with time frames specified in Exchange rules.[25] The effect of the inability to compare cash trades through the facilities of a qualified clearing agency has been that clearing firms have had to use manual procedures to compare the trades with each other (*i.e.*, ex-clearing house comparison).[26] Such manual procedures have applied to any ex-clearing house comparison of any stock, right, warrant, "when issued" and "when distributed" securities,[27] whether settlement is to be regular way, next-day, or seller's option.

Under the current NYSE ex-clearing house procedures, before a securities delivery can be effected, there must be: (1) A manual delivery of the comparison form by the selling party to the office of the buying party, (2) verification of the form's trade details, and (3) attestation of form's accuracy by the buying party. Because of the narrow time frames involved in cash transactions, the NYSE claims in its filing that it is not unusual for these comparison forms to be processed in a perfunctory manner, especially for cash transactions made late in a trading session.

The NYSE states in its filing that the manual operations and the short time frames involved in cash transactions have caused the Data Management Division of Wall Street ("DMD"), a division of the Securities Industry Association, to ask the Exchange to permit the use of OCS for the automated comparison of cash trades.[28] The Exchange further notes that the comparison of ex-clearing house transactions, including cash trades, is the last remaining Exchange comparison process that has not been automated for stocks, rights, and warrants.

The NYSE represents in its filing that these two additional functions of OCS (*i.e.*, SOS and automated comparison of ex-clearing house trades) will not diminish its capability to accommodate ordinary message traffic as well as peak traffic. Additionally, the Exchange represents that the Correction System's security measures are satisfactory to prevent internal and external violations.

## II. Discussion

Section 6(b)(5) of the Act [29] states that exchange rules should be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities transactions; to remove impediments to a free and open market; and to protect investors and the public interest. Additionally, section 17A(a)(1) of the Act [30] notes the need for prompt and efficient clearance and settlement of securities transactions, and it expressly encourages the use of automation to achieve more efficient and safer clearance and settlement procedures. As discussed below, the Commission

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[14] *E.g.*, a customer entering into five buy transactions of 2,000 shares each at a different contract prices but with an average price of $10.33 per share might want to combine the trades for step-out purposes into a single block consisting of 10,000 shares at $10.33 per share.

The act of combining trades for step-out purposes would not affect the status of the original trades, which already would have been booked, and probably would have been compared, prior to the step-out movement. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 25, 1991).

[15] See NYSE Rule 142.

[16] For further information on SOS usage fees, see Securities Exchange Act Release No. 29113 (April 22, 1991), 56 FR 19704 (File No. SR–NYSE–91–10).

[17] Trade comparison, or the matching of the buy and sell sides of a securities transaction, is the process after a trade has been executed by which broker-dealers or their agents confirm with each other the exact terms of a trade (*e.g.*, issue, number of units, and price) and the existence of a contract. The successful completion of this process results in a compared trade. Comparison is the first of three basic steps in the post-execution processing of a securities transaction (the other two steps being clearance and settlement). Division of Market Regulation, Securities and Exchange Commission, "Market Analysis of October 13 and 16, 1989," 118–119 (December 1990).

[18] "Ex-clearing house" comparison of trades means that the trades are not submitted to a clearing house for comparison, clearance, or settlement. See NYSE Rule 133.

[19] Securities Exchange Act Release No. 11470 (March 20, 1989), 54 FR 11470 (File No. SR–NYSE–88–36).

[20] The term "regular way" means trade settlement on the fifth business day after the execution of a trade. NYSE Rule 64(3).

[21] Securities Exchange Act Release No. 28285 (July 30, 1990), 55 FR 31030 (File No. SR–NYSE–90–21).

[22] Securities Exchange Act Release No. 27598 (January 18, 1990), 55 FR 1749 (File No. SR–NYSE–89–43). For definitions of "next day" and "seller's option," see NYSE Rule 64.

[23] "Cash" and "same day" are synonymous settlement terms. For definition of "cash" or "same day" settlement, see NYSE Rule 64(1).

[24] While any type of trade may be compared on an ex-clearing house basis, the Exchange notes that the vast majority of ex-clearing house trades (about 90%) are stock trades executed for "cash" settlement. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 6, 1991).

[25] Under NYSE Rule 177, deliveries of securities in transactions made for "cash" at or before 2:00 p.m. (ET) must be made before 2:30 p.m. and deliveries of securities in transactions made for "cash" after 2:00 p.m. must be made and delivered within 30 minutes after the time of the transaction.

[26] NYSE Rules 133 and 137.

[27] "When issued" and "when distributed" transactions are made on a contingency basis on the assumption that issuance or distribution will occur in the near future. M. Thompsett, Investment & Securities Dictionary, 310 (1986).

[28] Letter from Edward Adinolfi, Salvatore Cucco, and Thomas McConnell, DMD, to Dennis Covelli, Vice President, Post Trade Services, NYSE (December 5, 1990) (submitted by NYSE as part of this filing).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78q–1(a)(1).

believes the proposal furthers these goals.

The Commission believes that the SOS enhancement to OCS will provide numerous post-execution efficiencies by replacing traditional step-out techniques with an automated system that will be safer, more effective, and less expensive per step-out movement. NYSE safeguards include: (1) Preventing members from changing the price or quantity of any trade in OCS and from effecting executions within SOS, and (2) maintaining appropriate audit trails and surveillance reviews of SOS activity. Accordingly, the Commission believes that SOS is consistent with sections 6(b)(5) and 17A(a)(1) of the Act.[31]

In approving SOS, the Commission recognizes that numerous legitimate reasons exist for effecting post-execution movements of securities positions among clearing members, some of which have been set forth above. Nevertheless, the Commission cautions participants and the Exchange against facilitating transactions that do not meet the safe harbor provisions of section 28(e) of the Act [32] and the requirements of Rule 10b–10 under the Act.[33]

In previously approving, on a pilot basis, the NYSE's request to provide facilities for trading listed securities with expedited settlement time frames (*i.e.*, amendments to NYSE Rule 64), the Commission urged the NYSE to monitor trading activity and the need for automated centralized post-trade processing facilities.[34] This could run counter to the goals of the National Clearance and Settlement System which the Commission and the NYSE have sought to develop, foster, and enhance during the last two decades.[35] While the Commission observed that expedited trades may be appropriate in certain circumstances, it warned that if exchanges were to allow the number of trades processed on a manual, ex-clearing house basis to increase, they would increase the risk of delays and other inefficiencies in the marketplace, including the risk of a recurrence of the paperwork problems of the 1960s.[36]

In this proposal, the NYSE is taking a first step in the right direction by providing a centralized, automated facility for comparison of member trades that must be settled ex-clearing. The Commission urges NYSE to consider other steps that would facilitate centralized and automated clearance and settlement of these trades.

### III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly with sections 6(b)(5) and 17A of the Act, and the rules and regulations thereunder.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–NYSE–91–09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–18275 Filed 7–31–91; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–29494; File No. SR–OCC–91–11]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving on an Accelerated Basis a Proposed Rule Change Relating to a Change in the Structure of OCC's Nominating Committee

July 26, 1991.

### I. Introduction

On June 17, 1991, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–91–11) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 19, 1991, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal on an accelerated basis.

### II. Description of the Proposal

OCC's proposed rule change creates, through the use of a transitional by-law, two classes of Elected Members to its Nominating Committee ("Committee") with each class comprised of three Elected Members. The terms of both classes of Elected Members will be two years and will be staggered so that each year the terms of three Elected Members will expire.

Section 5 of Article III of OCC's By-laws currently provides for the Committee to be reconstituted each year with all Elected Members of the Committee being elected at the preceding annual meeting of stockholders. Section 5 states, "Prior to each annual meeting of stockholders, the Nominating Committee then in office shall nominate * * * one person for each position as Elected Member of the Nominating Committee to be filled at such annual meeting." As a result, when the Committee deliberates each January, it does so without any input from the prior Committee. The proposed by-law change, however, would create two classes of Elected Members with the two classes serving staggered terms of two years each. Thus, only one three person class of Elected Members would be nominated to serve as Elected Members each year.

The proposed by-law provides for Class I Elected Members to serve a one year term which shall begin at the 1992 annual meeting of stockholders and shall expire at the 1993 annual meeting of stockholders. Class II Elected Members shall serve a complete two year term beginning at the 1992 annual meeting of stockholders and ending at the 1994 annual meeting of stockholders. Thereafter, all Elected Members will be elected for two year terms.

Furthermore, the proposed by-law provides that no Elected Member will be eligible for election to the Committee after having served a full two year term until after a lapse of one year. A term of less than two years may, however, immediately precede the full two year term. The additional restrictions, which provide that no director of OCC and no person who is not a Clearing Member or a Designee of a Clearing Member Organization shall be eligible to serve as an Elected Member, remain intact. Taken together, these procedures will eliminate the complete turnover of the Committee each year and will develop greater continuity among the Elected Members.

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[31] 15 U.S.C. 78f(b)(5) and 78q–1(a)(1).

[32] 15 U.S.C. 78bb(e).

[33] 17 CFR 240.10b–10.

[34] Securities Exchange Act Release No. 24161 (March 2, 1987), 52 FR 7350 (File No. SR–NYSE–85–37).

[35] See section 17A of the Act, 15 U.S.C. § 78q–1. See also Senate Banking, Housing & Urban Affairs Comm., Report to Accompany S. 249 (Securities Acts Amendments of 1975), Senate Rep. No. 75, 94th Cong., 1st Sess. 53–55 (1975). See also Securities Exchange Act Release No. 25120 (November 13, 1987), 52 FR 44506 (File No. SR–NYSE–87–04) (order approving NYSE Rule 387).

[36] For a review of the "Paperwork Crisis" of the 1960s, see Securities and Exchange Commission, "Study of Unsafe Practices of Brokers and Dealers," H.R. Doc. No. 231, 92nd Cong. 1st Sess. 1–30, 95–122 (1971).

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29437 (July 12, 1991), 56 FR 33319.

In order to accommodate the transition to the new structure of the Committee, OCC is proposing that a transitional by-law be adopted that will expire at the 1992 annual meeting of stockholders. The transitional by-law provides for the Committee to be increased from six to eight Elected Members until the 1992 annual meeting of stockholders. At the 1992 meeting, the number of Elected Members will be reduced to six. Three of the eight Elected Members from the prior Committee will remain as Class I Elected Members and will serve an additional one year term that will expire at the 1993 annual meeting of stockholders. Thereafter, as mentioned above, terms of the Elected Members will be for two years and will be staggered so that each year the terms of three Elected Members will expire and three new Elected Members will serve on the Committee.[3]

## III. Discussion

The Commission believes that OCC's proposed rule change is consistent with the Act and in particular with Section 17A of the Act. Section 17A(a)(3)(C) of the Act [4] requires that the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. The Commission believes that the creation of two year staggered terms for Elected Members of the Committee in order to eliminate the complete turnover of the Committee each year will increase continuity and enhance efficiency among Elected Members for purposes of selecting nominees for OCC's Board of Directors. The proposed rule change will thus continue to assure a fair representation of OCC's shareholders and participants in the selection of its directors and administration of its affairs.

Furthermore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. As the first step towards the creation of two year staggered terms for Elected Members, the proposed transitional by-law calls for the appointment of two additional by-law calls for the appointment of two additional Elected Members to the Committee prior to January 1992. In order that OCC has adequate time to properly implement this plan of action, the Commission is approving the proposal on an accelerated basis. Additionally, the Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments have been received to date by the Commission or OCC.

## IV. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[5] that OCC's proposed rule change (SR–OCC–91–11) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91–18276 Filed 7–31–91; 8:45 am]

BILLING CODE 8010–01–M

[3] OCC further clarified the procedural aspects of the rule change through the use of a hypothetical example. Letter from Stuart C. Harvey, Jr., Staff Counsel, OCC, to Scott S. Wallner, Staff Attorney, Division of Market Regulation, Commission (July 17, 1991).

[4] 15 U.S.C. 78q–1(a)(3)(C).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

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**[Release No. 34–29490; File No. SR–PHLX–91–14]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Broker's Notice to the Trading Crowd

July 25, 1991.

On May 6, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to 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 proposal to adopt Options Floor Procedure Advice ("OFPA") C–5, which establishes the presumption under PHLX rules that an options floor broker who is also a registered options trader ("ROT") is acting on behalf of his ROT account, unless otherwise specified. Accordingly, under the rule change an options floor broker who is also an ROT will be required to notify the trading crowd at the time he seeks a market that he is acting in his capacity as a floor broker rather than as an ROT.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29267 (June 3, 1991), 56 FR 26706. No comments were received on the proposed rule change.

The PHLX proposes to amend its rules by adding OFPA C–5, entitled ROTs Acting as Floor Brokers, which will require an options floor broker who is also an ROT to notify the trading crowd at the time he seeks a market that he is acting in his capacity as a floor broker rather than as an ROT. Thus, when an ROT makes a bid or an offer, the trading crowd will presume that he is acting on behalf of his own account, unless he indicates to the crowd that he is acting as a floor broker. OFPA C–5 provides an exception to the notification requirement for a floor broker representing an order in an issue in which he represented himself previously that day as an agent, provided that the floor broker has obtained the prior approval of a floor official.

Violations of OFPA C–5 will carry a fine of $250.00 for the first occurrence; $500.00 for the second occurrence; and, thereafter, a sanction discretionary with the Business Conduct Committee.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[3] Specifically, the Commission finds that the proposal is designed to prevent fraudulent and manipulative acts and practices in that it will help the PHLX ensure compliance with the Exchange's priority and parity rules.

The PHLX recently amended its equity option and foreign currency option priority-parity rules.[4] The amended priority-parity rules are designed to ensure that public customer equity and foreign currency options orders are accorded priority over all member orders at the same price, except specialists' orders and ROT closing orders, thereby allowing public customer options orders to receive a timely execution.[5]

By requiring ROTs to voice when they are acting on behalf of a customer, the proposal facilitates the enforcement of the Exchange's priority and parity rules, thus contributing to fair and orderly markets, the protection of investors, and the promotion of investor confidence in

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1990).

[3] 15 U.S.C. 78f (1982).

[4] See Securities Exchange Act Release Nos. 28934 (March 4, 1991), 56 FR 10005 (File No. SR–PHLX–90–39, order approving foreign currency option priority-parity rules) and 29065 (April 10, 1991), 56 FR 15394 (File No. SR–PHLX–90–20, order approving equity priority-parity rules).

[5] See Securities Exchange Act Release Nos. 28934 and 29065, *supra* note 4.

the PHLX options markets. At the same time, by allowing the trading crowd to presume that an ROT is acting for his own account, unless he provides notice to the contrary, the proposal aids the administration of rules intended to facilitate the market making obligations of ROTs. Through their market making activities, the ROTs provide depth and liquidity to the PHLX's options markets. Finally, the proposal will help the PHLX administer its rules prohibiting dual trading.[6]

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–91–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–18197 Filed 7–31–91; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

*OMB Reviewer:* Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* 8(a) Capability Statement.
*Form No.:* SBA Forms 1815.
*Frequency:* Annual.
*Description of Respondents:* 8(a) Program Participants.
*Annual Responses:* 4,000.
*Annual Burden:* 2,000.

*Title:* Use of Proceeds Section 504.
*Form No.:* SBA Form 1808.
*Frequency:* On occasion.
*Description of Respondents:* Certified Development Companies.
*Annual Responses:* 1,200.
*Annual Burden:* 600.

*Title:* National Survey of Small and Minority Owned Business Access to Equity Capital.
*Form No.:* SBA Form 1791.
*Frequency:* One-time survey.
*Description of Respondents:* Small and minority business owners.
*Annual Responses:* 14,000.
*Annual Burden:* 1,200.

*Title:* SBIC Financial Reports.
*Form No.:* SBA Forms 468.1, 468.2, 468.3, and 468.4.
*Frequency:* Annual.
*Description of Respondents:* Small Business Investment Companies.
*Annual Responses:* 416.
*Annual Burden:* 7,072.

**Jeffrey Guide,**

*Acting Chief, Administrative Information Branch.*

[FR Doc. 91–18305 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2515]**

### Iowa and Contiguous Counties in Minnesota and Wisconsin; Amendment Number 1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated July 15 and 17, 1991, to the President's major disaster declaration of July 12, to include the counties of Black Hawk, Cass, Emmet, Johnson, and Tama in the State of Iowa as a disaster area as a result of damages caused by severe storms and flooding which occurred June 1–15, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Adair, Adams, Audubon, Benton, Cedar, Clay, Dickinson, Guthrie, Iowa, Linn, Louisa, Montgomery, Muscatine, Pottawattamie, Shelby, and Washington in the State of Iowa may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date filing applications for physical damage is September 11, 1991, and for economic injury until the close of business on April 13, 1992.

The economic injury number for the State of Iowa is 7342.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 19, 1991.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 91–18306 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2505]**

### Mississippi; Amendment #4; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 18, 1991, to the President's major disaster declaration of May 17, to include Benton County in the State of Mississippi as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 26 and continuing through May 31, 1991.

All counties contiguous to the above-named primary county have previously been named as contiguous or primary counties for the same occurrence.

As the termination date for filing applications for physical damage closed on Juy 15, 1991, prior to the Notice of Amendment cited above, the termination date for filing applications for physical damage for victims of the above-named county will be August 17, 1991, 30 days from the date of the amendment. The termination date for filing applications for economic injury remains the close of business February 18, 1992.

The economic injury number is 731500 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 22, 1991.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 91–18307 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

### Region IX Advisory Council Meeting

The U.S. Small Business Administration Region IX Advisory Council, Located in the geographical area of Santa Ana, will hold a public meeting from 9:30 a.m. to 11:30 a.m. on

[6] See PHLX Rule 1014(e)(i).
[7] 15 U.S.C. 78s(b)(2) (1982).
[8] 17 CFR 200.30–3(a)(12) (1990).

Wednesday, August 7, 1991, at Western Community Bank Offices, 321 East 6th Street, Corona, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John S. Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, suite 160, Santa Ana, California 92703, telephone (714) 836–2494.

Dated: July 25, 1991.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 91–18308 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

### Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, September 9, 1991, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business ADministration, or others present.

For further information, write or call Laura A. Brown, Acting District Director, U.S. Small Business Administration, 330 Main Street, Hazrtfor, Connecticut, telephone (203) 240–4670.

Dated: July 25, 1991.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 91–18309 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

### Region VIII Advisory Council Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, will hold a public meeting at 9 a.m. on Friday, September 6, 1991, in the Board Room, Federal Reserve Bank of Minneapolis, Helena Branch, 110 Neill Avenue, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, 301 South Park, Drawer 10054, Helena, Montana 59626–0054, telephone (406) 449–5381.

Dated: July 25, 1991.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 91–18310 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

### Bureau of Diplomatic Security

**[Public Notice 1439]**

### Anti-Terrorism Assistance Training

In accordance with Office of Management and Budget Circular No. A–102, dated March 3, 1988, the Department of State hereby gives notice of intention to establish a cooperative agreement for purposes of facilitating the accomplishment of the objectives of 22 U.S.C. 2349aa, et seq. Under this authority, assistance may be furnished to foreign law enforcement personnel to enhance their ability to deter terrorists and terrorist groups from engaging in international terrorist acts. The proposed agreement will encompass explosive detector dog training under the referenced authority.

The Department of State has identified the Connecticut State Police as having the necessary capabilities to conduct the training contemplated by this agreement. This agreement addresses a one-time requirement, and contemplates total funding of under $12,000. Training materials provided by the State of Connecticut and consumed in the training will be reimbursed by the Department of State.

If a similar need is identified in the future, the Department will entertain consideration of additional sources. Public comment on this intended action may be submitted within 20 days after the date of the **Federal Register** in which this notice appears, addressed to Rudy G. Hall, Bureau of Diplomatic Security (DS/OSA/ASD), SA–10, U.S. Department of State, Washington, DC 20522. Tel. (202) 663–0049.

Dated: July 23, 1991.

**Rudy G. Hall,**

*Chief, Administrative Services Division, Bureau of Diplomatic Security.*

[FR Doc. 91–18263 Filed 7–31–91; 8:45 am]

BILLING CODE 4710–22–M

## TENNESSEE VALLEY AUTHORITY

### Privacy Act of 1974; New Routine Use

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** New routine use for TVA–2, "Personnel Files—TVA."

**SUMMARY:** As required by the Privacy Act, TVA gave notice (56 FR 24439, May 30, 1991) of its intention to establish a new routine use for the system of records entitled TVA–2, "Personnel Files—TVA." No comments from the public were received. The new routine use as published on May 30, 1991, and as described below will therefore become a part of TVA–2. The full text of TVA–2 appears at 55 FR 34817–18 [August 24, 1990] 56 FR 19137 [April 25, 1991], and 56 FR 22902 [May 17, 1991].

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Brewer, Privacy Act Officer, TVA, 615–751–2520.

**TVA–2**

**SYSTEM NAME:**

Personnel Files—TVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10577, Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92–271, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

**Louis S. Grande,**

*Vice President, Information Services.*

[FR Doc. 91–18262 Filed 7–31–91; 8:45 am]

BILLING CODE 8120–08–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-91-28]

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 21, 1991.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 26, 1991.

**Deborah Swank,**

*Acting Manager, Program Management Staff, Office of the Chief Counsel.*

#### Petitions for Exemption

*Docket No.:* 12638
*Petitioner:* Air Transport Association of America.
*Sections of the FAR Affected:* 14 CFR 121.99 and 121.351(a).
*Description of Relief Sought:* To extend Exemption No. 2081, as amended, which grants Air Transport Association of America relief from §§ 121.99 and 121.351(a) of the Federal Aviation Regulations (FAR). This exemption allows part 121 operators to dispatch aircraft over certain oceanic areas with one of two required High Frequency radios inoperative at the time of dispatch, subject to certain conditions and limitations, and would otherwise terminate on October 31, 1991.

*Docket No.:* 23495
*Petitioner:* Department of the Army.
*Sections of the FAR Affected:* 14 CFR 91.209(a) and (b).
*Description of Relief Sought:* To renew Exemption No. 3946B from § 91.209(a) and (b) of the Federal Aviation Regulations. This exemption allows the Department of the Army tactical helicopters to conduct certain night flight military training operations without lighted aircraft position lights.

*Docket No.:* 26584
*Petitioner:* PHH Corporation.
*Sections of the FAR Affected: 14 CFR 135.165(b)(6) and (b)(7).*
*Description of Relief Sought/ Disposition:* To exempt PHH Corporation from § 135.165(b)(6) and (b)(7) of the Federal Aviation Regulations (FAR). This exemption, if granted, would permit PHH Corporation to operate aircraft equipped with only one high-frequency communications system in extended overwater operations in certain specified areas.

*Docket No.:* 26599
*Petitioner:* Regional Airline Association.
*Sections of the FAR Affected:* 14 CFR 91.203 and 47.49.
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5318, granted to the Air Transport Association of America (ATA), to include RAA member airlines and other similarly situated air carriers certificated in the United States and operating under parts 121 and 135 of the Federal Aviation Regulations. The RAA also proposes to include, under this exemption, operations in the States of Alaska and Hawaii and other United States territorial possessions, in addition to the contiguous 48 states of the United States.

#### Dispositions of Petitions

*Docket No.:* 25089
*Petitioner:* Hawkins & Powers Aviation, Inc.
*Sections of the FAR Affected:* 14 CFR 137.53(c)(2)
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5075 from § 137.53(c)(2) of the Federal Aviation Regulations which allows Hawkins & Powers Aviation, Inc., to conduct aerial applications of insecticide from C-118 A(DC-6) without the aircraft being equipped with a device capable of jettisoning within 45 seconds at least one-half of the aircraft's maximum authorized load of agricultural materials when operated over congested areas. Exemption No. 5075 is extended to August 31, 1993. *Grant, July 17, 1991, Exemption No. 5075A.*

*Docket No.:* 25776
*Petitioner:* Lynch Flying Service, Inc.
*Sections of the FAR Affected:* 14 CFR 43.3(g).
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5085 which provides Lynch relief from the requirements of § 43.3(g) of the Federal Aviation Regulations to the extent necessary to allow the appropriately trained and certificated pilots employed by Lynch to remove the passenger seats and install approved stretcher and base assemblies in the Cessna 400 Series aircraft operated by Lynch when such aircraft are being used in air ambulance service. The termination date of Exemption No. 5085 is extended for a period of 2 years from August 31, 1991. *Grant, July 19, 1991, Exemption No. 5085A.*

[FR Doc. 91-18239 Filed 7-31-91; 8:45 am]
BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement; St. Johns County, Florida

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

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in St. Johns County, Florida.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bobby W. Blackmon, District Engineer, Federal Highway Administration, 227 North Bronough Street, room 2015, Tallahassee, Florida 32301, telephone (904) 681–7239.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to extend State Road 312 in St. Johns County, Florida. The proposed improvement would involve the extension of State Road 312 from State Road 207 to State Road 5 (U.S. 1), a distance of 9.0 miles. The proposed extension is considered necessary to provide for existing and projected traffic demands. The new roadway would be constructed entirely on new alignment.

Alternatives under consideration include: (1) Taking no action; (2) constructing a multi-lane divided highway; (3) constructing a controlled access facility with, or without, frontage roads; (4) constructing a limited access freeway.

Coordination with appropriate Federal, State, and local agencies, and private citizens who have expressed interest in this proposal has been undertaken and will continue. A series of public meetings will be held in St. Johns County. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public agency review and comment. A coordination meeting was held at the project site in early 1991 with various regulatory agencies to discuss environmental issues related to the project. A formal scoping meeting will be held if appropriate.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

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

Issued on: July 22, 1991.

**J.R. Skinner,**

*Division Administrator, Tallahassee, Florida.*

[FR Doc. 91–18189 Filed 7–31–91; 8:45 am]

BILLING CODE 4910–22–M

## Environmental Impact Statement: Sears Island, Waldo County, ME

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

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a supplement to the Final Environmental Impact Statement will be prepared for the proposed dry cargo terminal and affiliated structures at Sears Island in Searsport, Waldo County, Maine.

**FOR FURTHER INFORMATION CONTACT:** William D. Richardson, Division Administrator, Federal Highway Administration, Federal Building, room 614, Augusta, ME 04330, Tel: (207) 622–8487; or Janet L. Myers, Project Manager, Maine Department of Transportation, State House Station #16, Augusta, ME 04333, Tel: (207) 289–2696.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Maine Department of Transportaion, will prepare a supplement to the Final Environmental Impact Statement on the proposed dry cargo terminal and related structures at Sears Island, Searsport, Waldo County, Maine. The terminal was the subject of a final environmental impact statement (FHWA–ME–EIS–86–01–F) approved by the FHWA on October 9, 1987. As previously approved, the project consists of a two birth marginal wharf and related land-based support facilities. Access to the terminal will be by rail line and highway. The terminal is designed to accommodate future expansion of up to four additional berths. The facility is needed in order to provide transportation services for import and export bulk and container cargo and to facilitate economic development in the Waldo County area.

Since the approval of the Final EIS, additional wetland areas on Sears Island have been delineated that are within the limits of the proposed project. The project area, including the future expansion area, is to be evaluated to determine the potential impacts of the project on the wetlands. The Supplemental EIS will include a study to determine whether alternate locations for the terminal or for related facilities would be feasible and/or appropriate. The Supplemental EIS will not include a detailed study of issues which are not significant or have been covered sufficiently by the Final EIS.

Appropriate measures to mitigate the impacts of the project on wetlands will be evaluated in the Supplemental EIS. A previously commenced study of the potential environmental impacts of future development of the expansion area will be incorporated into the Supplemental EIS.

No formal scoping meeting for the Supplemental EIS will be held. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who previously expressed or are known to have an interest in this proposal. One or more public workshops/hearings will be held. Public notice will be given of the time and place of all workshops/hearings. The draft Supplemental EIS will be available for public and agency review and comment prior to a public workshop/hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS, as well as any requests for further information about the project or this proposed action, should be directed to the FHWA and/or MDOT at the address provided above.

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

Issued on: July 25, 1991.

**William D. Richardson,**

*FHWA Division Administrator, Maine.*

[FR Doc. 91–18242 Filed 7–31–91; 8:45 am]

BILLING CODE 4910–22–M

## National Highway Traffic Safety Administraiton

## Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

**AGENCY:** National Highway Traffic Safety Administration, (NHTSA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48854).

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

**SUPPLEMENTARY INFORMATION:** On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published in appendix D to that notice (49 FR 48864), a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL, one (1) breath measurement device has been tested and found to conform to the requirements of the Specifications for mobile and non-mobile evidential breath testers: CMI, Inc.'s Intoxilyzer 1400. Further, the designation of an approved instrument has been changed. Plus 4 Engineering, which previously submitted and had approved a modification to the Intoxilyzer 5000 (56 FR 11817), is designating that modification as "5000 Plus4". This is solely an editorial change.

The Conforming Products List is therefore amended as follows:

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

| Manufacturer and model | Mobile | Non-mobile |
|---|---|---|
| Alcohol Countermeasures System, Inc., Port Huron, MI | | |
| Alert J3AD | X | X |
| BAC Systems, Inc., Ontario, Canada | | |
| Breath Analysis computer | | X |
| CAMEC Ltd., North Shields, Tyne and Ware, England | | |
| IR Breath Analyzer | X | X |
| CMI, Inc., Owensboro, KY | | |
| Intoxilyzer Model | | |
| 1400 | X | X |
| 4011 | X | X |
| 4011A | X | X |
| 4011AS | X | X |
| 4011AS-A | X | X |
| 4011AS-AQ | X | X |
| 4011 AW | X | X |
| 4011A27-10100 | X | X |
| 4011A27-10100 with filter | X | X |
| 5000 | X | X |
| 5000 (w/Cal. Vapor Re-Circ.) | X | X |
| 5000 w/⅜" ID Hose option | X | X |
| 5000 (CAL DOJ) | X | X |
| 5000 (VA) | X | X |
| PAC 1200 | X | X |
| SD-2 | X | X |
| Decator Electronics, Decator, IL | | |
| Alco-Tector model 500 | | X |
| Intoximeters, Inc., St. Louis, MO | | |
| Photo Electric Intoximeter | | X |
| GC Intoximeter MK II | X | X |
| GC Intoximeter MK IV | X | X |
| Auto Intoximeter | X | X |
| Intoximeter Model | | |
| 3000 | X | X |
| 3000 (rev B1) | X | X |
| 3000 (rev B2) | X | X |
| 3000 (rev B2A) | X | X |
| 3000 (rev B2A) w/FM option | X | X |
| 3000 (Fuel Cell) | X | X |
| 3000 D | X | X |
| 3000 DFC | X | X |
| Alco-Sensor III | X | X |
| Alco-Sensor IIIA | X | X |
| RBT III | X | X |
| Komyo Kitagawa, Kogyo, K.K. | | |
| Alcolyzer DPA-2 | X | X |
| Breath Alcohol Meter PAM 101B | X | X |
| Life-Loc, Inc., Wheat Ridge, CO | | |
| PBA 3000-P | X | X |
| Lion Laboratories, Ltd., Cardiff, Wales, UK | | |
| Alcolmeter Model | X | X |
| AE-D1 | X | X |
| SD-2 | X | X |
| EBA | X | X |
| Auto-Alcolmeter | | X |
| Luckey Laboratories, San Bernadino, CA | | |
| Alco-Analyzer Model | | |
| 1000 | | X |
| 2000 | | X |
| National Draeger, Inc., Pittsburgh, PA | | |
| Alcotest Model | | |
| 7010 | X | X |
| 7110 | X | X |
| 7410 | X | X |
| Breathalyzer Model | | |
| 900 | X | X |
| 900A | X | X |
| 900BG | X | X |
| National Patent Analytical Systems, Inc., East Hartford, CT | | |
| BAC Datamaster | X | X |
| Omicron Systems, Palo Alto, CA | | |
| Intoxilyzer Model | | |
| 4011 | X | X |
| 4011AW | X | X |
| Plus 4 Engineering, Minturn, CO | | |
| 5000 Plus4 | X | X |
| Siemans-Allis, Cherry Hill, NJ | | |
| Alcomat | X | X |
| Alcomat F | X | X |
| Smith and Wesson Electronics, Springfield, MA | | |
| Breathalyzer Model | | |
| 900 | X | X |
| 900A | X | X |
| 1000 | X | X |
| 2000 | X | X |
| 2000 (non-Humidity Sensor) | X | X |
| Stephenson Corp. | | |
| Breathalyzer 900 | X | X |
| U.S. Alcohol Testing, Inc./Protection Devices, Inc., Dayton, NJ | | |
| Alco-Analyzer 1000 | | X |
| Alco-Analyzer 2000 | | X |
| Verax Systems, Inc., Fairport, NY | | |
| The BAC Verifier | X | X |
| BAC Verifier Datamaster | X | X |
| BAC Verifier Datamaster II | X | X |

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

**Michael B. Brownlee,**

*Associate Administrator for Traffic Safety Programs.*

[FR Doc. 91-18250 Filed 7-30-91; 9:09 am]

BILLING CODE 4910-59-M

## Maritime Administration

**[Docket No. S-880]**

### American President Lines, Ltd.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as amended, to Permit Foreign-Flag Space Charters

American President Lines, Ltd. (APL), by application dated June 26, 1991, requests waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended, (Act), for *ad hoc* foreign-flag space charters by APL pursuant to APL's participation in the eastbound amended Transpacific Stabilization Agreement, designated Federal Maritime Commission (FMC) No. 203-11223, and in the westbound Transpacific Space Utilization Agreement, designated FMC No. 217-011324.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 8, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: July 29, 1991.

**Joel C. Richard,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 91-18273 Filed 7-31-91; 8:45 am]

BILLING CODE 4910-81-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Supplement to Department Circular—Public Debt Series—No. 22–91]**

### Treasury Notes, Series AD–1993

Washington, July 24, 1991.

The Secretary announced on July 23, 1991, that the interest rate on the notes designated Series AD–1993, described in Department Circular—Public Debt Series—No. 22–91 dated July 18, 1991, will be 6⅞ percent. Interest on the notes will be payable at the rate of 6⅞ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 91–18303 Filed 7–31–91; 8:45 am]

BILLING CODE 4810–40–M

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**[Supplement to Department Circular—Public Debt Series—No. 22–91]**

### Treasury Notes, Series R–1996

Washington, July 25, 1991.

The Secretary announced on July 24, 1991, that the interest rate on the notes designated Series R–1996, described in Department Circular—Public Debt Series—No. 23–91 dated July 18, 1991, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 91–18304 Filed 7–31–91; 8:45 am]

BILLING CODE 4810–40–M

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### Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1991.

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 1980, Public Law 96–511. 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 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number*: 1545–0175.
*Form Number*: 4626.
*Type of Review*: Revision.
*Title*: Alternative Minimum Tax—Corporations (including environmental tax).
*Description*: Form 4626 is used by corporations to calculate their alternative minimum tax and environmental tax.
*Respondents:* businesses or other for-profit.
*Estimated Number of Respondents*: 100,000.
*Estimated Burden Hours Per Response/Recordkeeping:*
Recordkeeping—18 hours, 11 minutes
Learning about the law or the form—13 hours, 48 minutes
Preparing and sending the form to IRS—14 hours, 43 minutes
*Frequency of Response*: Annually.
*Estimated Total Recordkeeping/Reporting Burden*: 4,669,000 hours.
*OMB Number*: 1545–0410.
*Form Number*: 6468,6469.
*Type of Review*: Extension.
*Title*: How to Prepare Form 6469 (Form 6468); Tape Label for Form W4 (Form 6460).
*Description*: 26 USC 3402 requires all employers making payments of wages to deduct (withhold) tax upon such payments. Employers are further required under Regulation 31.3402(f)(2)–1(g) to submit certain withholding certificates (W–4) to the IRS. Forms 6469 (labels) and 6468 (instructions) are sent to employers who prefer to file this information on magnetic tape.
*Respondents*: State or local governments, Farms, businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
*Estimated Number of Respondents*: 70.
*Estimated Burden Hours Per Response*: 6 minutes
*Frequency of Response*: Quarterly.
*Estimated Total Reporting Burden*: 28 hours.
*Clearance Officer*: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
*OMB Reviewer*: Milo Sunderhaul (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 91–18198 Filed 7–31–91; 8:45 am]

BILLING CODE 4830–01–M

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1991.

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 1980, Public Law 96–511. 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 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0128.
*Form Number:* 1120–L.
*Type of Review:* Revision.
*Title:* U.S. Life Insurance Company Income Tax Return.
*Description:* Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 2,440.
*Estimated Burden Hours Per Response/Recordkeeping:*
Recordkeeping—75 hours, 34 minutes
Learning about the law or the form—24 hours, 21 minutes
Preparing the form—38 hours, 46 minutes
Copying, assembling, and sending the form to IRS—3 hours, 29 minutes
*Frequency of Response:* Annually.
*Estimated Total Recordkeeping/Reporting Burden:* 346,870 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 91–18199 Filed 7–31–91; 8:45 am]

BILLING CODE 4830–01–M

## Bureau of Alcohol, Tobacco and Firearms

## Granting of Relief, Federal Firearms Privileges

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

**ACTION:** Notice of granting of restoration of federal firearms privileges.

**SUMMARY:** The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

**FOR FURTHER INFORMATION CONTACT:** Special Agent in Charge Karl Stankovic, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202–566–7258).

**SUPPLEMENTARY INFORMATION:** In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

*Adler, Carl* 10905 North Kendall Drive, Apartment 307, Miami, Florida, convicted on November 2, 1948, in the Northern District Court of Chicago, Illinois.

*Anderson, Thomas Alan* 2609 North Jay Street, Chandler, Arizona, convicted on May 6, 1985, in the United States District Court, State of Arizona.

*Ashley, John Wayne* Route 5, Box 172–D, Hertford, North Carolina, convicted on January 5, 1982, in the United States District Court, Fayetteville, North Carolina.

*Bagby, James Robert* 4740 Barney School Road, Campbellsville, Kentucky, convicted on January 18, 1986, in the Taylor County Circuit Court, Campbellsville, Kentucky.

*Beardsley, Jesse J.* 1177 East Hill Road, Grand Blanc, Michigan, convicted on February 8, 1988, in the United States District Court, Flint, Michigan.

*Bierschbach, Allen John* 409 West Main Street, Melrose, Minnesota, convicted on June 12, 1984, in the United States District Court, St. Paul, Minnesota.

*Bierschbach, Jerry Francis* 40434 227th Avenue, Albany, Minnesota, convicted on June 11, 1984, in the United States District Court, Third Division, St. Paul, Minnesota.

*Blossom, Aaron Kay* 4660 Cottrell, Vassar, Michigan, convicted on January 6, 1987, in the United States District Court, Eastern Judicial District of Michigan.

*Bresette, Albert Alson Senior* 1 Joy Place, Portland, Maine, convicted on November 1, 1958, in the Oxford County Superior Court, Rumford, Maine.

*Brewer, Bobby Neal* Post Office Box 942, Russellville, Alabama, convicted on April 23, 1982, in the United States District Court, Northern District of Alabama, Birmingham, Alabama.

*Brinig, Leroy Donald* 5948 Regent Avenue North, Crystal, Minnesota, convicted on December 4, 1970, in the United States District Court, Judicial District of Minneapolis, Minnesota; and also on August 4, 1978, in the Hennepin County District Court, Minnesota.

*Brown, Gerry Dale* 506 Friedriech, Eldon, Missouri, convicted on June 2, 1971, in the Circuit Court of Camden, Missouri.

*Brown, Silas Coley* 1718 Rutland Court, Columbia, South Carolina, convicted on March 8, 1976, in the United States District Court, Jacksonville, Florida.

*Brown, Willie Glen* 317 West Bundy Avenue, Flint, Michigan, convicted on May 16, 1960, in the Circuit Court of Genesse County, Michigan.

*Brummett, Michael Gregory* 4404 Ridge Drive, High Ridge, Missouri, convicted on October 18, 1974, in the Circuit Court of St. Louis, Missouri.

*Burnette, Tommy Dennis* 44 Regent Drive, Greenville, South Carolina, convicted on September 10, 1986, in the United States District Court, Greenville, South Carolina.

*Butler, David Leroy* 408 Tuscaloosa Avenue, Apartment 8, Birmingham, Alabama, convicted on November 10, 1950, in the Circuit Court of Montgomery County, Alabama.

*Cook, Otto Herman* 2222 East 8th, Space 122, Pueblo, Colorado, convicted on May 3, 1984, in the Pueblo County District Court, Pueblo, Colorado.

*Cope, Robert Lee* 129 South Downey Avenue, Indianapolis, Indiana, convicted on August 9, 1984, in the Southern Judicial District of Indianapolis, Indiana.

*Corporation, Northrop* 1840 Century Park East, Los Angeles, California, convicted on February 27, 1990, in the United States District Court, Central District of California.

*Coward, Wallace D.* 4827 North Fifth Street, Philadelphia, Pennsylvania, convicted on September 5, 1974, in the Court of Common Pleas, Philadelphia, Pennsylvania.

*Crenshaw, Charles Ray* 8975 New Bowling Green Road, Smith Grove, Kentucky, convicted on July 26, 1976, in the Metcalfe Circuit Court, Edmonton, Kentucky.

*Depasquale, Joseph Lewis* 156–27 91st Street, Howard Beach, Queens, New York, convicted on March 4, 1985, in the United States District Court, Eastern Judicial District of New York.

*Dolecki, Fred Arthur* 6215 Charlesworth, Dearborn Heights, Michigan, convicted on June 12, 1961, in the United States District Court, Detroit, Michigan.

*Drake, Joseph Freeman Junior* 5011 Greenwood Road, Louisville, Kentucky, convicted on September 15, 1977, in the Jefferson Circuit Court, Louisville, Kentucky.

*Dutcher, L.D. 6028 Flagstone Drive, Jackson, Michigan, convicted on April 15, 1976, in the Jackson County Circuit Court, Jackson, Michigan.*

*Eddy, Robert Leroy* Route 2 Box 663, Raymond, Washington, convicted on June 22, 1981, in the Clatoop County Circuit Court, Oregon.

*Eis, Camryn Nolyn* 7902 Highway 147, Two Rivers, Wisconsin, convicted on May 20, 1986, in the Circuit Court of Manitowoc County, Manitowoc, Wisconsin.

*Fauver, Rodney Allen* 1599 Valley Mill Road, Winchester, Virginia, convicted on September 9, 1979, in the Frederick County Court, Winchester, Virginia.

*Felgar, Walter Aten* 122 West Hobard Avenue, Findlay, Ohio, convicted on May 18, 1987, in the United States District of Toledo, Ohio.

*Folea, James William* 662 Blair Street, St. Paul, Minnesota, convicted on August 18, 1980, in the United States District Court, Minneapolis, Minnesota.

*Frazier, Douglas Gene* 447 Division Avenue, Pittsburgh, Pennsylvania, convicted on January 25, 1983, in the Allegheny County Court, Pittsburgh, Pennsylvania.

*Garner, Dennis Dwayne* 100 Red Oak Circle, Lexington, Tennessee, convicted on January 10, 1975, in the United States District Court, Western District of Tennessee, Memphis, Tennessee.

*Gary, Juan E.* 1209 Hampton Avenue, Paducah, Kentucky, convicted on November 14, 1974, in the McCraken County Circuit Court, Paducah, Kentucky.

*Gatlin, Ollie H.* 11261 Highway 1078, Folson, Louisiana, convicted on November 20, 1984, in the United States District Court, Eastern Judicial District of Louisiana.

*Hampton, Lester B.* 8432 East Jefferson, Apartment 207, Detroit, Michigan, convicted on March 20, 1958, in the New Orleans, Parish, New Orleans, Louisiana.

*Hannah, Joseph Michael* 2720 Oklahoma, Muskogee, Oklahoma, convicted on December 13, 1971, in the District Court, Tulsa County, Oklahoma.

*Hannigan, James Robertson* Box 31, Ransom, Pennsylvania, convicted on July 1, 1963, in the United States District Court, Charleston, West Virginia.

*Harris, Robert Andrew* 401 Birch Avenue, Selma, Alabama, convicted on February 22, 1971 and March 11, 1971, in the Circuit Court of Dallas County, Alabama.

*Hibshman, Franklin Carl Junior* 51793 RD 19 North, Elkhart, Indiana, convicted on

March 21, 1970, in the Elkhart Superior Court, Elkhart, Indiana.

*Hilgar, Darren Dale* Route 3, Box 559–E, Gravois Mills, Missouri, convicted on January 13, 1984, and on May 21, 1987, in the Circuit Court of Morgan County, Missouri.

*Hoker, Dennis Frederick* 14503 Swanfield Drive, Houston, Texas, convicted on March 19, 1973, and on April 8, 1974, in the Southern Judicial District Court of Texas; and also on November 6, 1975, in the Western Judicial District of Oklahoma.

*Jackson, Roy Dan* General Delivery, Cranks, New York, convicted on July 26, 1984, in the United States District Court, Roanoke, Virginia.

*Jacobs, Ford* Post Office Box 157, Pippa Passes, Kentucky, convicted on August 16, 1985, in the United States District Court, Pikeville, Kentucky.

*James, Frederick Keith* 311 Carefree Circle, Aberdeen, Washington, convicted on October 3, 1955, in the Grays Harbor Superior Court, Montesano, Washington.

*Johnson, Michael Thomas* 10251–A d'Iberville Road, d'Iberville, Mississippi, convicted on January 26, 1987, in the United States District Court, Southern District of Mississippi, Biloxi, Mississippi.

*Johnson, Thomas B.* 14006 Barcalow Street, Philadelphia, Pennsylvania, convicted on February 13, 1956, in the United States District Court, Eastern District of Pennsylvania.

*Kemrer, Betsy Ellen* 34 Kendes Road, Millersville, Pennsylvania, convicted on March 3, 1972, and March 29, 1973, in the Court of Common Pleas, Lancaster County, Pennsylvania.

*King, Donald James* 322 East Johnson Street, Fond du Lac, Wisconsin, convicted on October 27, 1980, in the Forest County Circuit Court of Wisconsin.

*Kinsman, Cheryl* 319 Perkasie Avenue, West Lawn, Pennsylvania, convicted on April 5, 1985, in the Jefferson County Court, Golden, Colorado.

*Lamb, Floyd Roland* Post Office Box 344, Buckhorn Ranch, Alamo, Nevada, convicted on March 14, 1984, in the United States District Court, Las Vegas, Nevada.

*Mangold, Trevor Edison* 8 Cheyenne Drive, Great Falls, Montana, convicted on September 3, 1986, in the United States District Court, Great Falls, Montana.

*May, Lawrence* Route 1, Box 902, Thomasville, North Carolina, convicted on June 28, 1977, in the Circuit Court for Buchanan County, Grundy, Virginia.

*May, Theodore Frederick* 3169 Emery Lane, Ravenna, Michigan, convicted on December 3, 1987, in the United States District Court, Western District of Michigan.

*Mazzola, Charles Thomas* 2611 NW. Marken Street, Bend, Oregon, convicted on April 20, 1981, in the Stanislaus County Superior Court, California.

*McFarland, Mosel M.* 1516 East Ambassador Lane, Ford Heights, Illinois, convicted on June 16, 1953, in the Circuit Court, Fredericksburg, Virginia.

*McIntire, William Allan* 1020 North Watts Street, Portland, Oregon, convicted on January 25, 1965, in the Municipal Court, Pomona County, Pomona, California.

*Mohr, Robert Lee* 13572 East Tremblay Drive, Vicksburg, Michigan, convicted on July 22, 1983, in the United States District Court, Wesern District of Michigan.

*Morgan, Lehman Harvey* 1206 Green Hollow Run, Douglas, Georgia, convicted on March 27, 1951, in the United States District Court, Middle District of Georgia, Valdosta, Georgia;, and March 29, 1988, in the United States District Court, Middle District of Georgia, Albany, Georgia.

*Nickelson, Orlando Charles* 231 South Warren, Newport, Washington, convicted on July 28, 1987, in the Pend Oreille County Superior Court, State of Washington.

*Norton, Timothy Oriel* 201 West Poplar Street, Cobden, Illinois, convicted on September 16, 1986, in the Southern Judicial District of Illinois.

*Nugent, Padraic Pearse* 149 Chicago Avenue, Massapequa, New York, convicted on April 6, 1965, in the United States District Court, Uniondale, New York.

*Oelke, Donald Victor* 1009 Hickory, Marathon, Wisconsin, convicted on February 17, 1984, in the United States District Court, Western District of Wisconsin, Madison, Wisconsin.

*Pattee, Thomas James* 153 East Main Street, Campbellsport, Wisconsin, convicted on May 13 1966, in the Circuit Court of Douglas County, Wisconsin.

*Payne, Wilbert D. Junior* 550B Hardaway Circle, Opelika, Alabama, convicted on September 3, 1980, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

*Petkas, Anthony James* 822 Plainwood, Houston, Texas, convicted on June 6, 1973, in the Texas Judicial District Court, Travis County, Texas.

*Pieper, David Vernon* Route 1, Box 372–A, Almond, Wisconsin, convicted on January 6, 1984, in the Fond du Lac County Circuit Court, Branch 4, Fond du Lac, Wisconsin.

*Pride, Hemphill P. II* 3025 Forest Drive, Columbia, South Carolina, convicted on December 16, 1977, in the United States District Court, Columbia, South Carolina.

*Pruett, Johnny Walter* 4183 Catalpa Hill Drive, Bartlett, Tennessee, convicted on February 13, 1987, in the Western Judicial District Court, Memphis, Tennessee.

*Ransier, Sherry Elaine* 8511–A Lawyer's Road, Charlotte, North Carolina, convicted on October 15, 1986, in the Mecklenburg County Superior Court, Charlotte, North Carolina.

*Reese, Dennis James* 215 West North Street, Geneseo, Illinois, convicted on July 7, 1989, in the United States District Court for the Eastern District of Alexandria, Virginia, Alexandria, Virginia.

*Reno, Philip Joseph Junior* 666 High Street, Apartment 2, Bath, Maine, convicted on August 10, 1978, in the Maine Superior Court, Bath, Maine.

*Ristvedt, Michael David* 204 Independence Street, West Salem, Illinois, convicted on September 16, 1985, in the United States District Court, Benton, Illinois.

*Rushing, Wayne Eugene* Country Club Apartment C–2, Lanett, Alabama, convicted on December 9, 1975, in the Superior Court of Sunter County, Georgia.

*Sacks, John Edward* 14501 Northwest Cornelius Road, Portland, Oregon, convicted on December 24, 1985, in the Oregon Circuit Court, Benton County, Oregon.

*Schneider, Alfred Bernard* 33 Beckerle Street, Danbury, Connecticut, convicted on January 9, 1973, in the United States District Court for the Southern District of New York.

*Schuman, William Jerome* Post Office Box 476, Lac du Flambeau, Wisconsin, convicted on February 25, 1981, in the Vilas County Court, Eagle River, Wisconsin.

*Shunn, Gary Glen* 7107 Mildred Lane, Loveland, Colorado, convicted on February 4, 1964, Larimer County District Court, Ft. Collins, Colorado.

*Shyda, Doris Elaine* 1635 South Lincoln Avenue, Lebanon, Pennsylvania, convicted on April 18, 1975, in the United States District Court, Baltimore, Maryland.

*Sims, Ricky Lyn* 1320 Glen Oaks Court, Norman, Oklahoma, convicted on February 2, 1981, in the United States District Court, Western District of Oklahoma.

*Skaggs, Michael Wayne* Route 1, Box 197, Mauckport, Indiana, convicted on April 16, 1985, in the County Court, Harrison County, Indiana.

*Slate, Bobby Eugene* 102–A Woodbend Court, Highpoint, North Carolina, convicted on October 16, 1984, in the United States District Court, Greensboro, North Carolina.

*Smith, Donald Eugene* Post Office Box 874, Bynum, Alabama, convicted on March 29, 1984, in the Calhoun County Circuit Court, Alabama.

*Smitha, Sherman L.* Route 3, Box 432, Shelbyville, Kentucky, convicted on June 1, 1982, in the United States District Court, Frankfort, Kentucky.

*Solomon, Edward Ferris* 3624 Tecumseh River Road, Lansing, Michigan, convicted on March 30, 1979, in the United States District Court, Grand Rapids, Michigan.

*Sottile, James John* 33 Sheryl Crescent, Smithtown, New York, convicted on December 9, 1974, in the United States District Court, Southern District of New York.

*Sullivan, Edward Francis* Route 1, Box 76, Delano, Minnesota, convicted on July 18, 1985, in the United States District Court, Judicial District of Minnesota, Minneapolis, Minnesota.

*Sullivan, Patrick Sidney* 18745 Rutledge Road, Wayzata, Minnesota, convicted on July 18, 1985, in the United States District Court, Judicial District of Minnesota.

*Swann, Elverson Mitchell* 6312 Shuman Street, Philadelphia, Pennsylvania, convicted on June 2, 1954, and on March 16, 1955, in the Philadelphia County Court, Philadelphia, Pennsylvania.

*Thomson, Jeffry Alan* 407 Third Avenue North, Onalaska, Wisconsin, convicted on November 13, 1981, in the LaCrosse County Circuit Court, Wisconsin.

*Veatch, Joseph Edgar* 1219 Oak Grove Road, Columbia, Kentucky, convicted on November 16, 1983, in the Adair County Court, Columbia, Kentucky.

*Walizer, Jerome Irvin* Rural Delivery 3, Cogan Station, Pennsylvania, convicted on November 3, 1961, in the Lycoming County

Criminal Court, Williamsport, Pennsylvania.

*Ward, Richard Francis* 2430 Woodward Avenue, Pittsburgh, Pennsylvania, convicted on June 6, 1984, in the Common Pleas Court, Alleghany County, Pittsburgh, Pennsylvania.

*Warren, James Larry* 1104 Cottonwood Lane, Dexter, Missouri, convicted on June 11, 1984, in the United States District Court, for the Eastern Judicial District of Missouri.

*Wiliams, Donald Lee* 8700 Westgate Street, Metaire, Louisiana, convicted on February 27, 1969, in the United States District Court of Alabama, Mobile, Alabama.

**Compliance with Executive Order 12291**

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: July 24, 1991.

**Stephen E. Higgins,**

*Director.*

[FR Doc. 91–18200 Filed 7–31–91; 8:45 am]

BILLING CODE 4810–31–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "The Radiance of Jade and the Crystal Clarity of Water: Korean Ceramics from the Ataka Collection" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at The Art Institute of Chicago, beginning on or about November 23, 1991, to on or about February 3, 1992, The Asian Art Museum of San Francisco (the Avery Brundage Collection), beginning on or about March 2, 1992, to on or about April 26, 1992, and at The Metropolitan Museum of Art, New York, New York, beginning on or about May 20, 1992, to on or about July 12, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 19, 1991.

**Alberto J. Mora,**

*General Counsel.*

[FR Doc. 91–18212 Filed 7–23–91; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Modification of Sugar Tariff-Rate Quota Allocation

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of modification of sugar tariff-rate import quota allocation.

**SUMMARY:** Notice is hereby given that the allocation of the tariff-rate import quota for sugar is modified by restoring to South Africa an allocation of the tariff-rate quota for sugar imports that was previously transferred to the Philippines under the Comprehensive Anti-Apartheid Act of 1986.

**EFFECTIVE DATE:** This notice is effective on October 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Joseph Papovich, Senior Agriculture Trade Policy Advisor, 395–5006, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

**SUPPLEMENTARY INFORMATION:** Section 323 of the Comprehensive Anti-Apartheid Act of 1986 (CAAA) (22 U.S.C. 5073) prohibited the importation into the United States of sugars, syrups, or molasses that are products of the Republic of South Africa, and increased the allocation of the Philippines under the absolute sugar import quota then in effect by the amount that had been allocated to the Republic of South Africa. Executive Order 12571 of October 27, 1986, delegated to the United States Trade Representative responsibility for the implementation of the relevant provisions of section 323.

Section 311 of the CAAA provides in relevant part for the termination of title III of the CAAA upon the fulfillment of 5 specified conditions. As stated in Executive Order No. 12769, dated July 10, 1991 (56 FR 31855), the President has concluded that these conditions have been fulfilled. Accordingly, the provisions of title III of the CAAA, including section 323, are terminated.

Presidential Proclamation No. 6179 of September 13, 1990 (55 FR 38923) converted the U.S. absolute sugar import quota into a tariff-rate quota, effective October 1, 1990. The provisions applicable to the tariff-rate quota are contained in Additional U.S. Note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). Paragraph (b)(i) of Additional U.S. Note 3 specifies the country-by-country allocation of the base quota amount for sugar imported under specified HTS subheadings. Paragraph (b)(ii) of Additional U.S. Note 3 provides that "The United States Trade Representative, after consultation with the Secretaries of State and Agriculture, may modify, suspend (for all or part of the of the [sic] quota amount), or reinstate the allocations provided for in this paragraph (including the addition or deletion of any country or area) if he finds that such action is appropriate to carry out the obligations of the United States under any international agreement to which the United States is a party."

In accordance with Executive Order No. 12571, and after consulting with the Secretaries of State and Agriculture, I have determined that, based on the termination of section 323 of the CAAA, it is appropriate to modify the allocations provided for in paragraph (b)(i) of Additional U.S. Note 3 to HTS chapter 17 to carry out the obligations of the United States under the General Agreement on Tariffs and Trade, in order to restore to the Republic of South Africa the sugar tariff-rate quota allocation previously transferred from it to the Philippines pursuant to section 323 of the CAAA.

Accordingly, Additional U.S. Note 3 to chapter 17 of the HTS is modified in paragraph (b)(i) by inserting immediately after the allocation for the Philippines a new allocation as follows: "South Africa 2.3", and by modifying the percentage distribution for the

Philippines by striking out "15.8" and inserting "13.5" in lieu thereof.

This action shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the beginning of the new tariff-rate quota period, which is October 1, 1991, and the HTS is accordingly modified on such date.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 91-18244 Filed 7-31-91; 8:45 am]

BILLING CODE 3190-01-M

# Sunshine Act Meetings

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:08 a.m. on Monday July 29, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 29, 1991.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 91–18341 Filed 7–29–91; 4:48 pm]

BILLING CODE 6714–01–M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:30 a.m., Wednesday, August 7 , 1991.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., 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.

**CONTRACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded annoucement of bank and bank holding company applications scheduled for the meeting.

Dated: July 30, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91. 18413 Filed 7–30–91; 2:07 pm]

BILLING CODE 6210–01–M

**LEGAL SERVICES CORPORATION**

Board of Directors Meeting; Advance Notice

**TIME AND DATE:** A meeting of the Board of Directors will be held on October 21, 1991. The meeting is tentatively scheduled to commence at 9:00 a.m.

**PLACE:** Portland Regency Hotel, 20 Milk Street, Portland, Maine 04101, (207) 774–4200, 1–800–727–3436.

The Legal Services Corporation has made arrangements with the Portland Regency Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available on October 20–21, 1991, interested members of the public are requested to contact the hotel directly at either of the telephone numbers listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by September 19, 1991, and will be responsible for making direct payment for lodging costs to the Portland Regency Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:** [To be announced]

**CONTACT PERSON FOR INFORMATION:** Patricia D. Batie, Executive Office, (202) 863–1839.

[For Hotel Reservations and/or Related Information, Please Contact the Portland Regency Hotel At the Above-Noted Telephone Numbers.]

Date Issued: July 30, 1991.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 91–18441 Filed 7–30–91 4:00 pm]

BILLING CODE 7050–01–M

**LEGAL SERVICES CORPORATION**

Board of Directors Meeting; Advance Notice

**TIME AND DATE:** A meeting of the Board of Directors will be held on September 16, 1991. The meeting is tentatively scheduled to commence at 9:00 a.m.

**PLACE:** Ramada Renaissance Hotel, 1001 County Line Road, The Ballroom, Jackson, Mississippi 39211 (601) 957–2800.

The Legal Services Corporation has made arrangements with the Ramada Renaissance Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available, interested members of the public are requested to contact the hotel directly at the telephone number listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by September 1, 1991, and will be responsible for making direct payment for lodging costs to the Ramada Renaissance Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:** [To be announced]

**CONTACT PERSON FOR INFORMATION:** Patricia D. Batie, Executive Office (202) 863–1839.

[For Hotel Reservations and/or Related Information, Please Contact the Ramada Renaissance Hotel at the Above-Noted Telephone Number.]

Date Issued: July 30, 1991.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 91–18442 Filed 7–30–91; 4:00 pm]

BILLING COCE 7050–01–M

**LEGAL SERVICES CORPORATION**

Board of Directors Meeting; Advance Notice

**TIME AND DATE:** A meeting of the Board of Directors will be held on November 11, 1991. The meeting is tentatively scheduled to commence at 9:00 a.m.

**PLACE:** Lowes L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, D.C. 20024; (202) 484–1000; 800–243–1166 (Reservations)

The Legal Services Corporation has made arrangements with the Lowes L'Enfant Plaza Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available, interested members of the public are requested to contact the hotel directly at either of the telephone numbers listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by October 11, 1991, and will be responsible for making direct payment for lodging costs to the Lowes L'Enfant Plaza Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:** [To be announced]

**CONTACT PERSON FOR INFORMATION:** Patricia D. Batie, Executive Office, (202) 863–1839.

[For Hotel Reservations and/or Related Information, Please Contact the Lowes L'Enfant Plaza Hotel at the Above-Noted Telephone Numbers.]

Date Issued: July 30, 1991.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 91–18443 Filed 7–30–91; 4:00 pm]

**BILLING COCE 7050–01–M**

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**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 3:00 p.m. on Thursday, August 8, 1991, and at 8:30 a.m. on Friday, August 9, 1991, in Washington, D.C. The August 8 meeting, at which the Board will consider 1) a filing with the Postal Rate Commission for a walk sequence discount for third-class mail; 2) the procurement of light delivery vehicles; and 3) the Postal Rate Commission's Decision in Docket No. R90–1, is closed to the public.

The August 9 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

**Agenda**

**Thursday Session**

*August 8—3:00 p.m. (Closed)*

1. Consideration of a Filing with the Postal Rate Commission for a Walk Sequence Discount for Third-Class Mail. (Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department)
2. Capital Investment for Light Delivery Vehicles. (Arthur Porwick, Assistant Postmaster General, Operations Systems and Performance Department, and A. Keith Strange, Acting Assistant Postmaster General, Procurement and Supply Department)
3. Consideration of the Postal Rate Commission's Decision in Docket No. R90–1.

**Friday Session**

*August 9—8:30 a.m. (Open)*

1. Minutes of the Previous Meeting, July 1–2, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Postal Rate Commission FY 1992 Budget Request. (Norma Pace, Chairman)
4. Capital Investments:

a. Memphis, Tennessee, Southern Regional Office and Service Centers. (Messrs. Lee and Smith)

b. National Eagle Hub Facility. (Messrs. Kane and Smith)

c. Santa Ana, California, South Orange County Annex, Advance Site Acquisition. (Mr. Smith)

d. Boston, Massachusetts, General Mail Facility Rehabilitation, Part I. (Messrs. Smith and Ranft)

e. Louisville, Kentucky, Airport Mail Facility. (Messrs. Smith and Syers)

f. Denver, Colorado, Airport Mail Facility. (Messrs. Smith and Beebe)

5. Quarterly Report on Finance Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
6. Tentative FY 1993 Budget Request. (Mr. Coppie)
7. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
8. EXFC's Impact on Operations. (William R. Cummings, Senior Assistant Postmaster General, Operations Support Group)
9. Tentative Agenda for September 9–10, 1991, meeting in Ottawa, Canada.

**David F. Harris,**

*Secretary.*

[FR Doc. 91–18414 Filed 7–30–91; 2:08 pm]

**BILLING CODE 7710–12–M**

# Corrections

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

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 HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 878

[Docket Nos. 88p-0179, 88p-0173, 88p-0136]

### Medical Devices; Reclassification and Codification of Nonabsorbable Poly(Ethylene Terephthalate) Surgical Suture, Nonabsorbable Polypropylene Surgical Suture, and Nonabsorbable Polyamide Surgical Suture

*Correction*

In rule document 91-12954 beginning on page 24684 in the issue of Friday, May 31, 1991, make the following corrections:

1. On page 24685, in the first column, in the first paragraph, in the ninth line, "polyamide" should read "polypropylene".

2. On the same page, in the same column, in the same paragraph, in the 2d line from the bottom; in the 3d paragraph, in the 3d and 13th lines; and in the 4th paragraph in the 10th line, "polypropylene" should read "polyamide"

3. On the same page, in the second column, the heading "**List of Subjects in 211 CFR Part 878**" should read "**List of Subjects in 21 CFR Part 878**".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Schedule of New and Revised Fees for Access to NOAA Environmental Data and Information and Products Derived Therefrom

*Correction*

In notice document 91-17090 beginning on page 33259, in the issue of Friday, July 19, 1991, make the following correction:

On page 33262, a portion of the table containing the "Schedule of Fees" was omitted. In section "C. Photogrammetry Branch", after the entry "Aerial Photograph: 4X color Enlargement," add section D and the omitted portion of section E set forth below.

BILLING CODE 1505-01-D

| Name of Product/Data/ Publication/Information | Current Fee | Supplemental Fee | Fair Market Fee | Supplemental Fee Range Low | Supplemental Fee Range High |
|---|---|---|---|---|---|
| D. Aeronautical Charting Division: | | | | | |
| Uncomposited Negative | $101.00 | $238.36 | $339.36 | $166.85 | $357.54 |
| Composited Negative (minimum order which includes two elements) | | | | | |
| Each additional element | $121.00 | $285.56 | $406.56 | $199.89 | $428.34 |
| Bromide Print | $29.00 | $68.44 | $97.44 | $47.91 | $102.66 |
| Research Request Litigation (one hour) | $35.00 | $82.60 | $117.60 | $57.82 | $123.90 |
| Research Request Non-Litigation (one hour) | $28.00 | $66.08 | $94.08 | $46.26 | $99.12 |
| Obsolete Charts | $3.00 | $7.08 | $10.08 | $4.96 | $10.62 |
| Special Mailing (for each 15 items (or fraction thereof) | $5.00 | $11.80 | $16.80 | $8.26 | $17.70 |
| Agents Mail Label Run | $82.00 | $193.52 | $275.52 | $135.46 | $290.28 |
| Special Obsolete Charts for Litigation Cases | $6.00 | $14.16 | $20.16 | $9.91 | $21.24 |
| E. Ocean & Lake Levels Division: | | | | | |
| Tides, Six-Minute Water Level Heights | $140.00 | $330.40 | $470.40 | $231.28 | $495.60 |
| Tides, Hourly Heights (1-3 months) | $101.00 | $238.36 | $339.36 | $166.85 | $357.54 |
| Tides, Hourly Heights (one year) | $107.00 | $252.52 | $359.52 | $176.76 | $378.78 |
| Tides, Hourly Heights (nth year) | $30.00 | $70.80 | $100.80 | $49.56 | $106.20 |
| Tides, Times and Heights of High and Low Waters (1-3 months) | $97.00 | $228.92 | $325.92 | $160.24 | $343.38 |
| Tides, Times and Heights of High and Low Waters (one year) | $106.00 | $250.16 | $356.16 | $175.11 | $375.24 |
| Tides, Times and Heights of High and Low Waters (nth year) | $30.00 | $70.80 | $100.80 | $49.56 | $106.20 |
| Tides, Times and Heights of High and Low Waters and Hourly Heights | $49.00 | $115.64 | $164.64 | $80.95 | $173.46 |
| Tides ABC, Near Real-Time Water Level Heights | $16.00 | $37.76 | $53.76 | $26.43 | $56.64 |
| Summary of Monthly Tidal Means and Extremes (complete series) | $70.00 | $165.20 | $235.20 | $115.64 | $247.80 |
| Summary of Monthly Tidal Means and Extremes (single type) | $26.00 | $61.36 | $87.36 | $42.95 | $92.04 |
| Published Bench Mark Sheets with Tidal Datums (single copy) | $10.00 | $23.60 | $33.60 | $16.52 | $35.40 |
| Published Bench Mark Sheets with Tidal Datum (nth copy) | $4.00 | $9.44 | $13.44 | $6.61 | $14.16 |

federal register

Thursday
August 1, 1991

Part II

# Department of Transportation

Coast Guard

33 CFR Part 161

National Vessel Traffic Services Regulations; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 161**

**[CGD 90-020]**

**RIN 2115-AD56**

## National Vessel Traffic Services Regulations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Oil Pollution Act of 1990 directed the Coast Guard to require appropriate vessels to participate in VTS systems. To accomplish this, the Coast Guard proposes requiring participation for vessels using the San Francisco, Houston/Galveston, and Louisville VTS systems, which are currently operated on a voluntary basis. The Coast Guard also proposes to simplify existing Vessel Traffic Service (VTS) regulations by promulgating standard national vessel traffic management and reporting procedures. The effect of this rulemaking would result in consolidated national VTS regulations, supplemented as necessary with local VTS rules. The rules for the Juan de Fuca Cooperative Vessel Traffic Management System (CVTMS) and Mississippi River would be independent and not a component of the National VTS rules, but are included in this part because of their vessel traffic management functions. These proposed rules are intended to enhance safe vessel movement by reducing the potential for groundings and collisions, and to minimize the risk of environmental harm resulting from collisions and groundings.

**DATES:** Comments must be received on or before September 30, 1991.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406), (CGD 90-20), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

**FOR FURTHER INFORMATION CONTACT:** Bruce Riley, Project Manager, Navigation Safety Systems Special Projects Staff, Tel. (202) 267-0412.

**SUPPLEMENTARY INFORMATION:**

### Request 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 this rulemaking (CGD 90-020) and the specific section of this proposal to which each comment applies, and give a reason for each comment. 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. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid in this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

### Drafting Information

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

### Background and Purpose

Currently, VTS Puget Sound, the Juan de Fuca Region Cooperative Vessel Traffic Management System, VTS Prince William Sound, VTS Berwick Bay, VTS St. Marys River and VTS New York require vessels, by regulation, to participate in their VTS systems. However, VTS San Francisco, VTS Houston/Galveston and VTS Louisville operate traffic systems with voluntary participation, and rely upon the cooperation and support of the marine community for their success. Although participation in the present voluntary systems is high, marine industry support is not sufficiently reliable when considering the potential for catastrophe.

Each existing VTS regulation was promulgated under a separate section in the Code of Federal Regulations (CFR) and therefore, much of the wording in each section is duplicative. This proposal would consolidate existing regulations for U.S. VTSs thereby eliminating duplication and create one national VTS regulation, modified or supplemented with local rules to address individual VTS operations. The Juan de Fuca Cooperative Vessel Traffic Management System and the Mississippi River regulations will remain as previously written, except for minor editorial changes, and will stand alone.

Local rules, requiring participation in VTS San Francisco, VTS Houston/Galveston and VTS Louisville, have been developed and are included in proposed subpart B.

### Discussion of Proposed Amendments

Part 161 is being largely rewritten and completely reorganized.

Subpart A would contain uniform national regulations generated from existing regulations, which would be applicable to all VTS areas. In these VTS areas, vessels would be required to: (1) Communicate with the VTC on certain designated frequencies in clear and unbroken English; (2) ensure that a copy of the regulations are on board; (3) provide the VTC with required movement and status reports; and (4) adhere to the prescribed traffic separation scheme.

Subpart B would contain local rules. The local rules include items of special interest to each VTS such as specific reporting points, operating frequencies, and area descriptions. The local rules for VTS Puget Sound, VTS Prince William Sound, VTS New York, VTS St. Marys River and VTS Berwick Bay were taken from existing rules. Local rules for required participation have been developed in cooperation with local mariners for VTS San Francisco, VTS Houston/Galveston, and VTS Louisville.

Subpart C would contain rules for the Juan de Fuca Region Cooperative Vessel Traffic Management System (CVTMS) and for portions of the Mississippi River. These rules have been amended for editorial purposes only.

### Regulatory Evaluation

This proposal is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary since the vast majority of vessel owners or operators affected by this rulemaking either participate voluntarily in existing VTSs or are required to participate in these VTSs by the present regulations.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant economic impact on a substantial number of small entities.

"Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The types of present users of VTSs would not change significantly because of this proposal. The modification of radio equipment, if necessary, would only affect a very small number of vessel owners or operators and would not incur a substantial cost. The Coast Guard expects that no vessel will be required to purchase new radio equipment.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

The portions of this proposed rulemaking requiring the collection of information under the Paperwork Reduction Act and 5 CFR part 1320, have been approved by a blanket OMB approval for 33 CFR part 161 (approval number 2115–0540). New information collection requirements would be added for VTS San Francisco, VTS Houston/Galveston and VTS Louisville, but will also be covered.

The voice reports required by these proposed rules are considered to be operational communications and transitory in nature, and therefore do not constitute the collection of information under the Paperwork Reduction Act.

### Federalism

The Coast Guard has analyzed this proposal in accordance with 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.

### Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Since this action is aimed primarily at regulatory action requiring the Master, Pilot, or person directing the movement of the vessel to continue participating in the VTS systems, no effect on the environment is expected. While the Coast Guard also recognizes that this rulemaking may also have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings, the impact is not expected to be significant enough to warrant further 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 161

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to revise part 161 of title 33 CFR and its authority citation as follows:

## PART 161—VESSEL TRAFFIC MANAGEMENT

### Subpart A—National Vessel Traffic Services General Rules

Sec.


161.10 Purpose.
161.11 Applicability.
161.12 Definitions.
161.13 Vessel operation.
161.14 Other laws and regulations.
161.15 VTC directions.
161.16 Requirement to carry regulations.
161.17 Authorization to deviate from these rules.


### Traffic Separation Scheme (TSS) Rules


161.20 Purpose of the TSS.
161.21 Vessel operation in the TSS.


### Communications Rules


161.30 Radiotelephone required.
161.31 English language.
161.32 Time.
161.33 Designated frequencies.


### Vessel Movement System Reporting Rules


161.40 Reports.
161.41 Initial report.
161.42 Underway report.
161.43 Follow-up reports.
161.44 Report of emergency deviation.
161.45 Final report.
161.46 Report of impairment to the operation of the vessel.
161.47 Miscellaneous reports.


### Descriptions and Geographic Coordinates


161.50 VTS Areas.


### Subpart B—Local Requirements

### Vessel Traffic Service New York (VTSNY)


161.101 Designated frequencies.
161.102 Reporting points.
161.103 VTS New York Area.
161.104 VTS New York Users Manual.


### Vessel Traffic Service Louisville (VTSL)


161.201 Description of operations.
161.202 Applicability.
161.203 Designated frequencies.
161.204 Reporting points.
161.205 Emergencies.
161.206 VTS Louisville Area.
161.207 VTS Louisville Users Manual.


### Vessel Traffic Service Houston/Galveston (VTSH/G)

Sec.


161.821 Designated frequencies.
161.822 Initial report.
161.823 Follow-up reports.
161.824 Special operation.
161.825 Ferry reports.
161.826 Reporting points.
161.827 VTS Houston/Galveston Area.
161.828 VTS Houston/Galveston Users Manual.


### Vessel Traffic Service Berwick Bay (VTSBE)


161.841 Applicability.
161.842 Definitions.
161.843 Designated frequency.
161.844 Radiotelephone equipment failure.
161.845 Means of reporting.
161.846 Initial report.
161.847 Follow-up report.
161.848 Reporting points.
161.849 High water towing limitations.
161.850 Precautionary notices.
161.851 Visual displays when limitations are in effect.
161.852 Notice of when limitations are in effect.
161.853 Operational limitations.
161.854 Horsepower limitations.
161.855 VTS Berwick Bay Area.
161.856 VTS Berwick Bay Users Manual.


### Vessel Traffic Service St. Marys River (VTSSMR)


161.901 Applicability.
161.902 Designated frequency.
161.903 Vessel movement reporting.
161.904 Reporting points.
161.905 Seasonal or temporary reporting points.
161.906 Transit of Canadian waters.
161.907 Ferry reports.
161.908 One-way traffic—normal conditions.
161.909 Meeting or overtaking in channels.
161.910 Winter navigation.
161.911 Anchorages—general.
161.912 Emergency anchoring.
161.913 Unauthorized anchorage.
161.914 Anchoring of dredging, construction or wrecking plants in channels.
161.915 Shifting anchorage under direction of the VTC.
161.916 Order of departure from anchorage.
161.917 Maximum speed limits.
161.918 Temporary speed limits.
161.919 Minimum speed limit through dredged channels.
161.920 Rules for towing vessels.
161.921 Channel closure and special rules.
161.922 VTS St. Marys River Area.
161.923 VTS St. Marys River Users Manual.


### Vessel Traffic Service San Francisco (VTSSF)


161.1101 Designated frequencies.
161.1102 Reporting points.
161.1103 Separation zones.
161.1104 Traffic lanes.
161.1105 Precautionary areas.
161.1106 Standard route deviations.
161.1107 Narrow channels or fairways.
161.1108 Safety procedures for vessels carrying certain dangerous cargoes in San Francisco Bay.
161.1109 VTS San Francisco Area.

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161.1110 VTS San Francisco Users Manual.

**Vessel Traffic Service Puget Sound (VTSPS)**

161.1301 Applicability.
161.1302 Navigation requirements.
161.1303 Cooperative Vessel Traffic Management System (CVTMS).
161.1304 Designated frequencies.
161.1305 Initial report.
161.1306 Underway report.
161.1307 Follow-up reports.
161.1308 Ferry reports.
161.1309 Local harbor reports.
161.1310 Separation zones.
161.1311 Traffic lanes east of Port Angeles.
161.1312 Precautionary areas east of Port Angeles.
161.1313 Rosario Strait and Guemes Channel Rules.
161.1314 Before entering Rosario Strait or Guemes Channel.
161.1315 Entering and transiting Rosario Strait or Guemes Channel.
161.1316 Passing arrangements in Rosario Strait or Guemes Channel.
161.1317 VTS Puget Sound Area.
161.1318 VTS Puget Sound Users Manual.

**Vessel Traffic Service Prince William Sound (VTSPWS)**

161.1701 Designated frequency.
161.1702 Initial report.
161.1703 Follow-up report.
161.1704 Reporting points.
161.1705 Traffic lanes.
161.1706 Separation zone.
161.1707 One-way traffic in Valdez Narrows.
161.1708 Entering Valdez Narrows.
161.1709 Communications in Valdez Narrows.
161.1710 Tank ships in the VTS Area.
161.1711 Tug assistance for tank ships.
161.1712 Special circumstances.
161.1713 VTS Prince William Sound Area.
161.1714 VTS Prince William Sound Users Manual.

**Subpart C—Other Vessel Traffic Management Systems**

**Juan De Fuca Region Cooperative Vessel Traffic Management System (CVTMS)**

*General Rules*

161.2000 Purpose.
161.2001 Applicability.
161.2002 Vessel exemptions.
161.2003 Definitions.
161.2004 Vessel operation in the CVTMS Area.
161.2005 CVTMC directions.
161.2006 Requirement to carry regulations.
161.2007 Laws and regulations not affected.
161.2008 Authorization to deviate from these rules; equivalent procedures.
161.2010 Emergencies.

**Communications Rules**

161.2012 Radio listening watch.
161.2014 Use of designated frequencies.
161.2016 Time.
161.2018 English language.
161.2020 Radiotelephone equipment failure.
161.2022 Report of radio failure.
161.2024 Report of impairment to the operation of the vessel.
161.2026 Miscellaneous reports.

**Vessel Movement Reporting System (VMRS) Rules**

Sec.
161.2027 Local harbor report.
161.2028 Initial report.
161.2031 Underway report.
161.2032 Zone boundary and calling-in-point report.
161.2034 Follow-up report.
161.2036 Final report.

**Traffic Separation Scheme (TSS) Rules**

161.2052 Vessel operation in the TSS.

**Descriptions and Geographic Coordinates**

161.2054 CVTMS Area.
161.2056 Tofino zone.
161.2058 Seattle zone.
161.2060 Vancouver zone.
161.2062 Separation zones.
161.2064 Traffic lanes.
161.2066 Precautionary areas.

**Mississippi River**

161.2101 Purpose and applicability.
161.2102 Vessel operation.

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

## Subpart A—National Vessel Traffic Services

### General Rules

**§ 161.10 Purpose.**

These rules are intended to enhance safe vessel movement by reducing the potential for rammings, groundings and collisions, and to minimize the risk of environmental harm resulting from those events.

**§ 161.11 Applicability.**

(a) General rule § 161.15, TSS rule § 161.21, and the Communications rule in § 161.33(a) apply to all vessels.

(b) Unless otherwise stated, the rules in subparts A and B of this part, apply to the operation of:

(1) Each manned vessel of 300 gross tons or more;

(2) Each commercial vessel of 26 feet or more in length engaged in towing astern, alongside, or by pushing ahead;

(3) Each vessel of 100 or more gross tons carrying one or more passengers for hire; and

(4) Each dredge and floating plant.

**§ 161.12 Definitions.**

As used in this part:

*Captain of the Port* (COTP) means the U.S. Coast Guard officer or his authorized representative assigned the duty of enforcing federal regulations within a specific area.

*Dead Weight Tons (DWT)* means the total loading capacity of a vessel expressed in long tons (2240 pounds).

*ETA* means estimated time of arrival.

*Floating plant* means any vessel, other than a vessel underway and making way, engaged in any construction, manufacturing, or exploration operation, and which may restrict the navigation of other vessels.

*Gross tons* means a vessel's volume as stated on the vessel's documents.

*Length* means overall length of a vessel.

*Length of tow* unless otherwise stated, length of tow when towing with a hawser means the length in feet from the stern of the towing vessel to the stern of the last barge or vessel in tow. When pushing ahead or towing alongside, length of tow means the overall length in feet of the tow including the length of the towing vessel.

*Person* includes an individual, firm, corporation, association, partnership, or government entity.

*Power driven vessel* means any vessel propelled by machinery.

*Precautionary area* means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

*Separation zone* means an area of Traffic Separation Scheme separating the opposing traffic lanes.

*Tank ship* means any vessel especially constructed or converted to carry liquid bulk petroleum cargo in tanks and propelled by power or sail.

*Towing* means towing astern, alongside, or pushing ahead.

*Traffic lane* means an area of the TSS in which all vessels normally proceed in the same direction. Natural obstacles, including those forming separation zones, may constitute a boundary.

*Traffic Separation Scheme (TSS)* means the routing measure aimed at the separation of opposing streams of traffic by appropriate means and by establishment of traffic lanes.

*Users manual* means the manual published for a specific VTS and intended to provide the VTS user with information, in addition to the regulations, which will assist the mariner in a transit through the VTS Area.

*Vessel* means every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

*Vessel Movement Reporting System (VMRS)* means the system used to track the vessel movements. This is accomplished by participating vessels providing position reports to the VTC, by radiotelephone or other means, at predetermined locations.

*Vessel Traffic Center (VTC)* means the shore based facility that operates the Vessel Traffic Service for the area.

*Vessel Traffic Service Area* or *VTS Area* means the geographical area described in these rules depicting a specific VTS's area of responsibility.

**§ 161.13 Vessel operation.**

(a) No person, except those authorized to do so under § 161.17, may direct or authorize the operation of a vessel in the VTS Area contrary to any rule in subparts A and B of this part.

(b) In subparts A and B of this part, the Master, Pilot, or person directing the movement of the vessel is responsible for ensuring that all actions required of the vessel are carried out.

**§ 161.14 Other laws and regulations.**

Unless expressly stated otherwise, nothing in these rules is intended to relieve any person or the Master, Pilot, or person directing the movement from complying with any other applicable federal laws or regulations.

**§ 161.15 VTC directions.**

(a) During conditions of vessel congestion, reduced visibility, adverse weather, or other hazardous circumstances, the VTC may issue directions to control, supervise, or otherwise manage traffic.

(b) The Master, Pilot, or person directing the movement of a vessel shall comply with VTC directions.

**§ 161.16 Requirement to carry regulations.**

All vessels listed in § 161.11(b) while operating within the VTS Area must have on board a current copy of these regulations.

Note: In addition to the Code of Federal Regulations, these regulations can be found in the United States Coast Pilot and in the VTS User's Manual for the area in which the vessel is operating. The Code of Federal Regulations can be obtained through the U.S. Government Printing Office. The User's Manual can be obtained free-of-charge by writing to the Commanding Officer of the VTS in which you are interested. VTS addresses are contained in subpart B of this part.

**§ 161.17 Authorization to deviate from these rules.**

(a) The Commander of the Coast Guard District in which a vessel is operating, may upon written request, issue a written authorization to deviate from these rules for an extended period of time, if the proposed deviation provides a level of safety beyond that provided by the required procedure, or is a maneuver with an operational necessity that can be conducted safely. An application for an authorization must state the need for the deviation and describe the proposed alternative operation.

(b) The VTC may, upon request, authorize a deviation from these rules for a voyage, or part of a voyage, if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure.

(1) The deviation request must be made well in advance to allow the requesting vessel and the VTC sufficient time to assess the safety of the proposed maneuver; and

(2) The requesting vessel and the VTC must exchange relevant information on vessel handling characteristics, traffic density, radar contacts, and environmental conditions, and must otherwise cooperate to promote a safe transit.

(c) In an emergency, the Master, Pilot, or person directing the movement of the vessel may deviate from these rules to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

(d) The Master, Pilot, or person directing the movement of the vessel remains responsible for the safe navigation and maneuvering of the vessel under all circumstances.

**Traffic Separation Scheme (TSS) Rules**

**§ 161.20 Purpose of the TSS.**

The TSS is the system of separation zones, traffic lanes, and precautionary areas, intended to promote safety by directing traffic through common, segregated routes. The TSS is depicted where it exists on all Naval Oceanographic Service (NOS)/Defense Mapping Agency (DMA), U.S. Department of Commerce, and National Oceanographic and Atmospheric Administration navigation charts covering the VTS Area.

**§ 161.21 Vessel operation in the TSS.**

(a) Participating vessels must use the TSS whenever an established TSS coincides with the intended transit route of the vessel.

(b) Vessels not using a TSS should avoid it by as wide a margin as practicable.

(c) All vessels should keep the center of circular precautionary areas and all TSS buoys to port when practical.

**Communications Rules**

**§ 161.30 Radiotelephone required.**

(a) When underway, anchored, or moored to a buoy, the Master, Pilot, or person directing the movement of a vessel in the VTS Area shall monitor the appropriate VTS frequency continuously, except when transmitting on that frequency, and shall respond promptly to all calls from the VTC. Refer to the local rules in subpart B of this part for the appropriate frequency.

(1) All communications and reports required by these rules must be made from the navigational bridge of the vessel, or in the case of a dredge, from its main control station.

(2) The radio listening watch required in paragraph (a) of this section may be maintained in a location other than the navigational bridge of the vessel when the vessel is anchored or moored to a buoy.

(b) A vessel subject to these rules, when properly monitoring the VTS and the bridge to bridge radiotelephone frequencies, is exempted from the requirement to maintain a listening watch on channel 16 (156.8 MHz) in accordance with 47 CFR 80.305.

(c) Whenever radiotelephone capability is required by this part, a vessel's radiotelephone equipment must be maintained in effective operating condition. If the radiotelephone required ceases to operate, the Master, Pilot, or person directing the movement of the vessel shall ensure it is restored to operating condition as soon as possible. The failure of a vessel's radiotelephone equipment while the vessel is underway, will not in itself constitute a violation of these rules, nor will it obligate the vessel to moor or anchor. However, the loss of radiotelephone capability will be considered as a factor in navigating the vessel, and required reports must be made by other means, if possible.

(d) A vessel that cannot simultaneously meet the radiotelephone requirements of this part, and the bridge-to-bridge radiotelephone rule in part 26 of this chapter, may not get underway without permission from the VTC.

(e) Unless otherwise indicated, all references to "channels" in §§ 161.31 through 161.47, refer to VHF/FM marine radio channels.

**§ 161.31 English language.**

(a) All communications and reports required by this part must be made in clear, unbroken English language.

(b) No vessel may enter or transit within the VTS Area unless there is at least one person on the bridge capable of conducting clear, unbroken, two-way radio communications using the English language.

**§ 161.32 Time.**

Where a report required by these rules includes time, the time must be specified using the local zone time in effect and the 24 hour clock system.

### § 161.33 Designated frequencies.

(a) No person shall transmit on VTS designated frequencies for any purpose other than the passing of information and reports to and from the VTC or necessary navigational safety information between vessels. Routine passing arrangements between vessels shall be conducted on the vessel bridge-to-bridge radiotelephone frequency (channel 13).

(b) All transmissions to the VTC must be initiated on low power. High power may be used only if low power communications are unsuccessful.

(c) Refer to the local rules in subpart B for the appropriate VTS frequency.

## Vessel Movement System Reporting Rules

### § 161.40 Reports.

All reports and communications required of vessels by this part must be made promptly by radiotelephone, except as otherwise provided, to the appropriate VTC on its designated frequency.

### § 161.41 Initial report.

At least 15 minutes, but not more than 45 minutes, before a vessel enters or intends to begin to navigate within an area covered by these rules, the vessel must report the following to the VTC:

(a) Name and type of vessel (if a tow, configuration of the tow and cargoes), and whether a pilot is aboard;

(b) Maximum draft;

(c) Location of the vessel;

(d) Estimated time of entering or beginning to navigate;

(e) Destination and route;

(f) Anticipated speed;

(g) Any planned maneuvers that may impede traffic;

(h) Whether any dangerous cargo defined in part 160 of this chapter is on board the vessel or its tow; and

(i) Any impairments to the operational capability of the vessel, including those described in § 161.46.

### § 161.42 Underway report.

As soon as a vessel enters or begins to navigate in the VTS Area, the Master, Pilot, or person directing the movement of the vessel shall report the name and location of the vessel to the VTC.

### § 161.43 Follow-up reports.

(a) A Master, Pilot, or person directing the movement of the vessel shall report the following to the VTC:

(1) Any information that has changed since the previous report including speed, destination, route, etc.;

(2) Intent to cross, join or depart a TSS, at least 10 minutes (for tows, at least 30 min) before crossing, joining or departing the TSS; and

(3) Intent to enter a separation zone while following a TSS lane, as far in advance as possible.

(b) Whenever directed to do so by the VTC or when passing a designated reporting point as specified in the Special Local Rules, a Master, Pilot, or person directing the movement of the vessel shall report the following:

(1) Vessel name; and

(2) Vessel location.

### § 161.44 Report of emergency deviation.

A Master, Pilot, or person directing the movement of the vessel shall report each emergency deviation from these rules to the VTC as soon as it is safe to do so.

### § 161.45 Final report.

After a vessel anchors in, moors in, or departs the VTS Area, the Master, Pilot, or person directing the movement of the vessel shall report the place and time of anchoring, mooring or departure from the VTS Area to the VTC.

### § 161.46 Report of impairment to the operation of a vessel.

A Master, Pilot, or person directing the movement of the vessel shall report to the VTC as soon as possible:

(a) Any condition of the vessel which impairs its navigation, such as defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective depth sounding device, or similar defects;

(b) Any difficulties in a towing operation;

(c) Any on board emergency such as fire, flooding, explosion, or similar occurrence;

(d) Any involvement in a grounding, collision, or ramming of a fixed or floating object; and

(e) Any impairment to the radiotelephone equipment capability required by this part.

### § 161.47 Miscellaneous reports.

A Master, Pilot, or person directing the movement of the vessel shall report to the VTC when aware of any of the following circumstances:

(a) Another vessel in apparent difficulty or involved in a casualty;

(b) Any obstruction which is hazardous to navigation;

(c) Any aid to navigation which is malfunctioning, damaged, missing, or off-station;

(d) Any pollution of the marine environment;

(e) Any vessel which is creating a hazard to vessel traffic;

(f) Adverse weather; and

(g) Reduced visibility.

## Descriptions and Geographic Coordinates

### § 161.50 VTS Areas.

(a) A description of each VTS Area is contained in the Local Rules contained in subpart B of this part.

Note: Geographic coordinates expressed in terms of latitude, longitude, or both, are not intended for plotting on maps or charts whose reference datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

# Subpart B—Local Requirements

Note: Local Rules:
The following local rules supplement or modify the rules in subpart A of this part:

## Vessel Traffic Service New York (VTSNY)

### § 161.101 Designated frequencies.

The following frequencies must be used when communicating with the VTC:

(a) Primary frequencies: 156.550 MHz (channel 11), 156.600 MHz (channel 12), and 156.700 MHz (channel 14).

(b) Secondary frequency (to be used if communications is not possible on a primary frequency): 156.650 MHz (channel 13).

(c) Vessels must communicate with the VTC on the designated frequencies, as directed by the VTC.

(d) The voice call for VTSNY is "NEW YORK TRAFFIC."

### § 161.102 Reporting points.

All vessels in the VTSNY Area must report to the VTC when passing the following reporting points:

| Name | Geographic location |
|---|---|
| Verrazano-Narrows Bridge. | Upper New York Bay. |
| Brooklyn Bridge | East River. |
| Holland Tunnel Ventilator | Hudson River. |
| Statue of Liberty | Upper New York Bay. |
| Red Hook | Buttermilk Channel. |
| Constable Hook | Kill Van Kull. |
| Bayonne Bridge | Kill Van Kull. |
| AK Railroad Bridge | Arthur Kill. |
| Lehigh Valley Draw Bridge. | Newark Bay. |
| Texaco Bayonne Facility | Newark Bay. |

### § 161.103 VTS New York Area.

The VTSNY Area consists of the navigable waters of the United States bounded by the Verrazano-Narrows Bridge to the south, the Brooklyn Bridge to the east, and to the north along a line

drawn east-west from the Holland Tunnel ventilator shaft at latitude 40°43'42" N and longitude 74°01'36" W, and the Arthur Kill Railroad Bridge to the west, and includes the Kill Van Kull and Newark Bay to the Lehigh Valley Draw Bridge.

**§ 161.104 VTS New York Users Manual.**

To obtain the VTSNY Users Manual free-of-charge write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service, Governors Island, New York, NY 10004.

**Vessel Traffic Service Louisville (VTSL)**

**§ 161.201 Description of operation.**

VTSL will go into operation when the McAlpine upper guage is at approximately 13.0' and rising. The VTC will remain in 24-hour operation until the river stage is at approximately 13.0' and falling.

**§ 161.202 Applicability.**

(a) Includes each vessel under 100 gross tons carrying seven or more passengers for hire and those vessels listed in § 161.11(b).

(b) In addition to those vessels listed in § 161.202(a), § 161.205 applies to all vessels within the VTSL Area.

**§ 161.203 Designated frequencies.**

(a) The primary frequency for communicating with the VTC is 156.65 MHz (channel 13).

(b) The VTC also monitors channel 16 (156.8 MHz). In the event of communications failure on channel 13, VTS communications must be on channel 16.

(c) The voice call sign for VTSL is "COAST GUARD LOUISVILLE TRAFFIC."

**§ 161.204 Reporting points.**

All vessels in the VTSL Area subject to the applicability rules in § 161.202(a) must report to the VTC when passing the following reporting points:

(a) McAlpine Locks ..... Mile 606.8;
(b) Conrail Railroad Bridge. Mile 604.4;
(c) Towhead Island..... Mile 602.5;
(d) Six Mile Island..... Mile 598.0, and
(e) Twelve Mile Island..... Mile 593.0.

**§ 161.205 Emergencies.**

(a) Four pairs of emergency mooring buoys have been established by the U.S. Corps of Engineers within the VTS Area. The buoys are 10 feet in diameter with retro-reflective sides. The two buoys which comprise each pair are 585 feet apart. The buoys are for emergency purposes only. However, vessel operators or their representatives may obtain permission from the COTP Louisville to moor to the buoys when downbound with a tow while awaiting permission from the VTS controller to proceed downstream. Pairs of buoys are located at:

(1) Indiana Bank—Mile 582.3 (near 18 Mile Island);

(2) Six Mile Island—Mile 597.5;

(3) Six Mile Island—Mile 598.2; and

(4) Kentucky Bank—Mile 599.8 (Cox's Park) (Note: Tows with tank barges carrying petroleum products or hazardous materials will not be granted permission to moor at this location due to the close proximity of the municipal water intakes. Towboat operators should keep this in mind and plan to use fleeting areas or other mooring buoys.)

(b) Emergency buoys are removed between May 1 and September 30 from all locations except Six Mile Island—Mile 598.2.

**§ 161.206 VTS Louisville Area.**

The VTSL Area consists of that section of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593).

**§ 161.207 VTS Louisville Users Manual.**

To obtain the VTSL Users Manual free-of-charge write to: Commanding Officer, U.S. Coast Guard Marine Safety Office, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

**Vessel Traffic Service Houston/ Galveston (VTSH/G)**

**§ 161.821 Designated frequencies.**

(a) The primary frequencies for communicating with the VTC are 156.550 MHz (channel 11) and 156.600 MHz (channel 12). Vessels shall use channel 11 for communicating with the VTC when inbound at Baytown Bend Light 113 or if operating above that location. Vessels shall use channel 12 when outbound at Baytown Bend Light 113 or if operating below that location.

(b) Vessels must communicate with the VTC on the designated frequencies, as directed by the VTC.

(c) The VTC also monitors channel 13 and may use this channel to hail vessels.

(d) The voice call for VTSH/G is "HOUSTON TRAFFIC."

**§ 161.822 Initial report.**

In addition to the information required in § 161.41 of this part, the following information is required of those vessels listed in § 161.11(b):

(a) Maximum draft;

(b) Overall length; and

(c) Maximum beam.

**§ 161.823 Follow-up reports.**

In addition to those instances listed in § 161.43, the Master, Pilot, or person directing the movement of the vessel must report to the VTC whenever:

(a) There is any change in tow configuration; or

(b) There is a tow pushed into the bank or windbound.

**§ 161.824 Special operations.**

(a) Dredges and floating plants must report the following to the VTC prior to commencing operations:

(1) Location and description of the operation;

(2) Any channel restrictions;

(3) Configuration of pipeline;

(4) Notification requirements for approaching vessels;

(5) Number of assist tugs;

(6) Frequencies guarded;

(7) Duration of the operation; and

(8) Operating impairments.

(b) Vessels conducting lightering or bunkering operations must report the following information to the VTC prior to commencing operations:

(1) Location and description of the operation;

(2) Names of vessels involved;

(3) Duration of operation;

(4) Frequencies guarded; and

(5) Number of assist tugs.

**§ 161.825 Ferry reports.**

(a) Ferries operating in the VTSH/G Area on a set schedule and route, both of which have been furnished to the VTC, need not make the following reports.

(1) Initial report (§ 161.41);

(2) Underway report (§ 161.42); and

(3) Final report (§ 161.45).

(b) Ferries must make reports to the VTC as required in §§ 161.42 and 161.45 under the following conditions, or when in the opinion of the operator it is prudent to participate:

(1) Adverse weather conditions exist;

(2) Conditions exist aboard the vessel which may adversely affect safe navigation; or

(3) When directed by the VTC due to hazardous conditions.

**§ 161.826 Reporting points.**

(a) All vessels in the VTSH/G Area must report to the VTC when passing the following reporting points:

(1) Galveston Bay Entrance Channel Lighted Buoy "GB";

(2) Galveston Bay Entrance Channel Lighted Buoys 11 and 12;

(3) Bolivar at ICW Mile 349;

(4) Pelican Cut at ICW Mile 351;

(5) Coast Guard Base at the entrance to Galveston Harbor;

(6) Texas City Channel Lighted Buoy 12;

(7) Houston Ship Channel Lighted Buoys 25 and 26. (For tows turning inbound from the ICW or Texas City Channel);

(8) Houston Ship Channel Lighted Buoys 31 and 32. (For all vessels except tows turning inbound from the ICW or Texas City Channel);

(9) Red Fish Bar Lights 1 and 2;

(10) Bayport Ship Channel Lights 7 and 8;

(11) Houston Ship Channel Buoys 69 and 70;

(12) Morgan's Point at Houston Ship, Channel Light 91;

(13) Exxon-Baytown at Baytown Light 113;

(14) Lynchburg at the ferry crossing;

(15) Shell Oil at Houston Ship Channel Light 142;

(16) Greens Bayou at Houston Ship Channel Light 152;

(17) Hess Turning Basin at Houston Ship Channel Light 160;

(18) Arco Turning Basin;

(19) I–610 bridge; and

(20) Houston Turning Basin.

**§ 161.827 VTS Houston/Galveston Area.**

The VTSH/G Area includes the following major waterways and portions of connecting waterways within the listed precautionary areas.

(a) Channels:

(1) Galveston Bay Entrance Channel;

(2) Outer Bar Channel;

(3) Inner Bar Channel;

(4) Bolivar Roads Channel;

(5) Galveston Channel;

(6) Gulf ICW and Galveston-Freeport Cut-Off from Mile 346 to Mile 352;

(7) Texas City Channel;

(8) Texas City Turning Basin;

(9) Texas City Canal Channel;

(10) Texas City Canal Turning Basin;

(11) Houston Ship Channel;

(12) Bayport Channel;

(13) Bayport Turning Basin; and

(14) Houston Turning Basin.

(b) Precautionary Areas:

(1) Bolivar Roads Precautionary Area. A circular area of 4,000 yards radius centered at 29°20'54" N 94°47'00" W;

(2) Red Fish Bar Precautionary Area. A circular area of 4,000 yards radius centered at 29°29'48" N 94°51'54" W;

(3) Bayport Channel Precautionary Area. A circular area of 4,000 yards radius centered at 29°36'42" N 94°57'12" W;

(4) Morgans Point Precautionary Area. A circular area of 2,000 yards radius centered at 29°41'00" N 94°59'00" W;

(5) Upper San Jacinto Bay Precautionary Area. A circular area of 1,000 yards radius centered at 29°42'20" N 95°01'05" W;

(6) Baytown Precautionary Area. A circular area of 1,000 yards radius centered at 29°43'34" N 95°01'24" W;

(7) Lynchburg Precautionary Area. A circular area of 1,000 yards radius centered at 29°45'47" N 95°04'48" W;

(8) Carpenters Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°45'17" N 95°05'36" W;

(9) Jacintoport Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'9" N 95°06'01" W;

(10) Greens Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'47" N 95°10'10" W;

(11) Hunting Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'20" N 95°12'06" W;

(12) Sims Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°43'11" N 95°14'21" W;

(13) Brady Island Precautionary Area. A circular area of 1,000 yards radius centered at 29°43'32" N 95°16'21" W; and

(14) Buffalo Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'59" N 95°17'19" W;

**§ 161.828 VTS Houston/Galveston Users Manual.**

To obtain copies of the VTSH/G Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service Houston/Galveston, P.O. Box 545, Galena Park, TX 77547–0545.

## Vessel Traffic Service Berwick Bay (VTSBB)

**§ 161.841 Applicability.**

In addition to the vessels listed in § 161.11(b), rules concerning the use of the English language (§ 161.31), reports (§ 161.40), and initial reports (§ 161.41), also apply to the operation of:

(a) Recreational vessels greater than 5 net tons, but less than 300 gross tons intending to transit under the lift span of the Southern Pacific Railroad (SPRR) bridge; and

(b) Commercial vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations in part 26 of this chapter.

**§ 161.842 Definitions.**

As used in §§ 161.841 through 161.855:

*Available horsepower* means all operational propulsion equipment based on the manufacturers' maximum rated continuous brake horsepower for all vessels engaged in a single towing operation.

*SPRR Bridge* means the Southern Pacific Railroad Bridge across Berwick Bay between the cities of Berwick and Morgan City, Louisiana.

*Tandem* means towed vessels, barges or other objects arranged in an end-to-end single file configuration.

**§ 161.843 Designated frequency.**

(a) The primary frequency for communicating with the VTC is 156.55 MHz (channel 11).

(b) The VTC also monitors channel 13. In the event of communications failure on channel 11, VTS communications must be on 156.65 MHz (channel 13).

(c) The voice call for VTSBB is "BERWICK TRAFFIC."

**§ 161.844 Radiotelephone equipment failure.**

In addition to the requirements set forth in § 161.30(2)(c) and (d), whenever a vessel's radiotelephone equipment fails, permission to proceed must first be obtained from the VTC if the vessel intends to:

(a) Transit the lift span of the SPRR bridge; or

(b) Transit any portion of the ICW between Mile 100 West of Harvey Lock (WHL) and Mile 102 (WHL).

**§ 161.845 Means of reporting.**

Vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations in part 26 of this chapter may make initial reports under § 161.41 and deviation reports under § 161.17(b) and (c) by radiotelephone, telephone (504) 385–2462, or other reasonable means.

**§ 161.846 Initial report.**

In addition to the requirements listed in § 161.41, the Master, Pilot, or person directing the movement of a vessel engaged in towing shall report to the VTC:

(a) The available horsepower;

(b) The overall length of the vessels involved; and

(c) Any cargo of particular hazard that is on board the vessel or any vessel being towed or if empty, the last cargoes carried.

**§ 161.847 Follow-up report.**

In addition to the requirements listed in § 161.43, if towing is involved the Master, Pilot, or person directing the movement of the vessel shall report to the VTC:

(a) Any revision to the available horsepower; and

(b) Any change to the overall length information given in the initial report.

**§ 161.848 Reporting points.**

All vessels in the VTSBB Area must report to the VTC when passing the following reporting points:

| Name | Geographic location |
|---|---|
| Long Island | Southern tip of Long Island; Mile 5 ICW Morgan City to Port Allen (MC/PA) Alternate Route. |
| Stouts Pass | Mile 115 Atchafalaya River Route. |
| Bayou Teche | One mile above Berwick Lock on Lower Atchafalaya River (Bayou Teche). |
| Berwick Lock | Near Berwick Bay on the Lower Atchafalaya River (Report only if transiting the lock). |
| Conrad's Point | Mile 1.5 ICW MC/PA Alternate Route. |
| 20 Grand Point | Mile 95.5 ICW West of Harvey Lock (WHL). |
| Shaffer Junction | Mile 94.5 ICW(WHL) at junction with Bayou Shaffer. |
| Bayou Shaffer | On Bayou Shaffer, one mile south of junction with Bayou Boeuf. |
| Bayou Boeuf Lock | Mile 93 ICW(WHL). |
| Overhead Cable | Mile 119 Atchafalaya River Route; Mile 96 ICW(WHL). |
| Floodway Gas Processing Plant | Mile 99 ICW(WHL). |
| Atchafalaya River | Mile 122 Atchafalaya River Route. |
| Little Wax Bayou | Mile 102 ICW(WHL). |

**161.849 High water towing limitations.**

The high water towing limitations in §§ 161.850 through 161.854 apply to the operation of vessels with tows intending to pass under the lift span of the SPRR bridge or through the navigational openings of either the U.S. 90 highway bridge or the LA Route 187 bridge, both to the north of the SPRR bridge, when those limitations are in effect.

**§ 161.850 Precautionary notices.**

(a) Whenever the Morgan City River Gauge reads 2.5 feet above mean sea level and COTP Morgan City anticipates that the water level will rise to 3 or more feet above mean sea level, the VTC will issue precautionary notices that the high water towing limitation may soon go into effect.

(b) Precautionary notices are:

(1) Announced during Coast Guard Marine Information Broadcasts;

(2) Published in Coast Guard Local Notices to Mariners;

(3) Announced by the VTC in response to initial reports; and

(4) Available by calling the VTC at (504) 385–2462 or on the frequency designated in § 161.843.

(c) Precautionary notices are given throughout the period during which the conditions in paragraph (a) of this section exist.

(d) During the period when the water level falls below 3 feet above mean sea level on the Morgan City River Gauge but remains at or above 2.5 feet, precautionary notices are issued only if the COTP anticipates that the decrease in the level below 3 feet is only temporary.

**§ 161.851 Visual displays when limitations are in effect.**

(a) The high water towing limitations are in effect when two vertically arranged red balls by day and two horizontally arranged flashing white lights by night are displayed on top of the SPRR Bridge.

(b) The VTC posts the visual displays under paragraph (a) of this section when the Morgan City River Gauge reads 3 or more feet above mean sea level.

(c) The VTC discontinues the visual displays under paragraph (a) of this section when the Morgan City River Gauge reads less than 3 feet above mean sea level.

**§ 161.852 Notice of when limitations are in effect.**

(a) In addition to the visual displays provided in § 161.851, notice of when limitations are in effect is:

(1) Announced during Coast Guard Marine Information Broadcasts;

(2) Published in Coast Guard Local Notices to Mariners;

(3) Announced by the VTC in response to initial reports; and

(4) Available by calling the VTC at (504) 385–2462 or on the frequency designated in § 161.843.

(b) The notices given under paragraph (a) of this section are given throughout the period when the limitations are in effect.

**§ 161.853 Operational limitations.**

(a) Towing on a hawser in either direction is prohibited, with the exception of one self-propelled vessel towing one other vessel upbound.

(b) Barges and towing vessels must be arranged in tandem, with the exception of one vessel towing one other vessel alongside.

(c) A towing vessel or vessels and tow must not exceed an overall length of 1,180 feet.

(d) Tows with a box end in the lead must not exceed two barges in length.

**Note:** The variation in the draft and the beam of the barges in a multi-barge tow should be minimized in order to avoid unnecessary strain on coupling wires.

**§ 161.854 Horsepower limitations.**

(a) All tows carrying cargoes of particular hazard as outlined in § 126.10 of this chapter must have available horsepower of at least 600 or three times the length of tow, whichever is greater.

(b) All other tows must have available horsepower of at least the following:

| Direction of transit | Available horsepower—daytime transit |
|---|---|
| Upbound | 400 or 3 times (length of tow minus 300 feet) whichever is greater. |
| Downbound | 600 or 3 times (length of tow minus 200 feet) whichever is greater. |
| | Available horsepower—nighttime transit |
| Upbound | 600 or 3 times (length of tow minus 200 feet) whichever is greater. |
| Downbound | 600 or 3 times length of tow whichever is greater. |

**Note:** "Daytime" is sunrise to sunset; "Nighttime" is sunset to sunrise.

(c) A 5% variance from the available horsepower required under paragraphs (a) and (b) of this section is permitted.

(d) Tows with 3,000 or more available horsepower need not comply with paragraphs (a) and (b) of this section.

**§ 161.855 VTS Berwick Bay Area.**

The VTSBB Area consists of the following segments of waterways:

(a) The ICW Morgan City to Port Allen Alternate Route from Mile 0 to Mile 5;

(b) The ICW from Mile 93 West of Harvey Lock (WHL) to Mile 102 WHL;

(c) The Atchafalaya River Route from Mile 113 to Mile 122;

(d) From Bayou Boeuf (ICW Mile 94.5 WHL) south one statute mile along Bayou Shaffer; and

(e) From Berwick Lock northwest one statute mile along the Lower Atchafalaya River.

**§ 161.856 VTS Berwick Bay Users Manual.**

To obtain copies of the VTS Berwick Bay Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Marine Safety Office Morgan City, 800 David Dr., Room 255, Morgan City, LA 70380–0800 or call (504) 385–2936.

**Vessel Traffic Service St. Marys River (VTSSMR)**

**§ 161.901 Applicability.**

The rules in subpart A of this part and §§ 161.901 through 161.923 also apply to all vessels over 20 meters (65 feet) in length, except fishing vessels under 300 gross tons.

**§ 161.902 Designated frequency.**

(a) The primary frequency for communicating with the VTC is 156.600 MHz (channel 12).

(b) The Master, Pilot, or person directing the movement of a vessel in the VTS Area must continuously monitor channel 12 and channel 13 (156.65 MHz).

**§ 161.903 Vessel movement reporting.**

When making reports or communicating with the VTC, participating vessels should address the center as "Soo Control."

**§ 161.904 Reporting points.**

All vessels in the VTSSMR Area must report to the VTC when passing the following reporting points:

| Down-bound vessels | Reporting points | Upbound vessels |
|---|---|---|
| Report | Ile Parisienne Light Gros Cap Reefs Light.. | Report |
| Report | Round Island Light 32 | Report. |
| Report | Pointe Louise | Report. |
| Report | Clear of lock | Report. |
| Report | Mission Point | Report. |
| Report | Six mile Point | Report. |
| Report | Ninemile Point | Report. |
| Report | West Neebish Channel Light 29. | |
| Report | Munuscong Lake Junction | Report. |
| Report | Lighted Buoy De Tour Reef Light. | Report |

**§ 161.905 Seasonal or temporary reporting points.**

(a) The following locations are reporting points during the winter navigation season:

| Down-bound vessels | Reporting points | Upbound vessels |
|---|---|---|
| Report | Ile Parisienne Light | Report. |
| Report | Gros Cap Reefs Light | Report. |
| Report | Birch Point | Report. |
| Report | Brush Point | Report. |
| Report | Clear of locks | Report. |
| Report | Mission Point | Report. |
| Report | Six Mile Point | Report. |
| Report | Nine Mile Point | Report. |
| Report | Stribling Point | Report. |
| Report | Johnson's Point | Report. |
| Report | Munuscong Lake Junction Lighted Bell Buoy. | Report. |
| Report | Pt Aux Frenes | Report. |
| Report | Lime Island | Report. |
| Report | De Tour Reef Light | Report. |

**Note:** Effective dates for these reporting points will be published in Local Notice to Mariners and will be available from the VTC.

(b) COTP Sault Ste. Marie may publish additional reporting points as temporary conditions require. These temporary reporting points with their effective dates are published by Broadcast Notices to Mariners and are available from the VTC.

**§ 161.906 Transit of Canadian waters.**

Vessels which have already reported to the VTC need not make a final report or an initial report when departing or reentering the VTS Area for a brief transit of Canadian waters

**§ 161.907 Ferry reports**

The Master, Pilot, or person directing the movement of any ferry vessel operating in the VTS Area which is operating in accordance with a route and schedule which has been provided to the VTC, need not comply with initial and final reporting rules.

**§ 161.908 One-way traffic—normal conditions.**

Under normal conditions, two-way traffic is permitted in all channels except the following:

(a) West Neebish Channel from Buoy 53 to Buoy 1 may be used only by vessels proceeding in a downbound direction;

(b) Middle Neebish Channel from Buoy 2 to Buoy 76 may be used only by vessels proceeding in an upbound direction;

(c) Pipe Island Course from Sweets Point to Watson Reefs Light may be used only by vessels proceeding in a downbound direction; and

(d) Pipe Island Passage to the east of Pipe Island Shoal and North of Pipe Island Twins from Watson Reefs Light to Sweets Point may be used only by vessels proceeding in an upbound direction.

**§ 161.909 Meeting or overtaking in channels.**

(a) No vessel 100 meters (350 feet) or greater in length may overtake or approach within one-quarter statute mile (0.2 nautical mile) a vessel proceeding in the same direction when in the following channels:

(1) West Neebish Channel between Nine Mile Point and Munuscong Lake Junction Lighted Bell Buoy;

(2) Middle Neebish Channel between Munuscong Lake Junction Lighted Bell Buoy and Ninemile Point; or

(3) Little Rapids Cut from Six Mile Point to Buoy 102.

(b) In addition to paragraph (a) of this section, when two-way traffic is permitted in Middle Neebish Channel no vessel 100 meters (350 feet) or greater in length may meet or overtake another vessel in the vicinity of:

(1) Johnson Point from Buoy 18 to Buoy 22;

(2) Mirre Point from Buoy 26 to Buoy 28; or

(3) Stribling Point from Buoy 39 to Buoy 43.

(c) This section does not apply when navigating through ice fields.

**§ 161.910 Winter navigation.**

(a) During the winter navigation season, West Neebish Channel (from Buoy 53 to Buoy 1) and Pipe Island Passage to the east of Pipe Island Shoal and north of Pipe Island Twins (from Watson Reef Light to Sweets Point) are normally closed to traffic. The COTP closes or opens these channels as ice conditions require after giving due consideration to the protection of the marine environment, waterway improvements, aids to navigation, the need for cross channel traffic (e.g., ferry vessels), the availability of icebreakers, and the safety of the island residents who, in the course of their daily business, must use naturally formed ice bridges for transportation to and from the mainland. Under normal seasonal conditions, only one closing each winter and one opening each spring are anticipated. Prior to closing or opening these channels, the COTP will give interested parties, including both shipping interests and island residents, not less than 72 hours' notice.

(b) When West Neebish Channel is closed, Middle Neebish Channel (from Buoy 2 to Buoy 76) will either be opened to two-way traffic or open to one-way traffic in alternate directions. When two-way traffic is authorized in Middle Neebish Channel, all upbound vessels must use the easterly 60 meters (197 feet) of the channel and all downbound vessels must use the westerly 91 meters (295 feet) of the channel. When two-way traffic is authorized in Middle Neebish Channel, upbound vessels drawing more than 20 feet must not proceed past Buoy 2 unless specifically authorized by the VTC. When one-way traffic in alternate directions is authorized in Middle Neebish Channel, all vessels must use the westerly 91 meters (295 feet) of the channel.

(c) When Pipe Island Passage is closed, Pipe Island Course is open to two-way traffic.

**§ 161.911 Anchorages—general.**

Vessels must not be anchored so as to swing into the channel limits or across charted steering courses.

**§ 161.912 Emergency anchoring.**

In an emergency, vessels may anchor in a dredged channel. Vessels must anchor as near the edge of the channel as possible and must get underway as soon as the emergency ceases, unless otherwise directed. The VTC must be advised of any emergency as soon as possible.

**§ 161.913 Unauthorized anchorage.**

No vessel may anchor at any time in the area southward of the Point Aux Pins range between Brush Point and the waterworks intake crib off Big Point or within one-quarter mile (0.2 nautical miles) of the intake crib in any direction.

**§ 161.914 Anchoring of dredging, construction or wrecking plants in channels.**

Dredging, construction, or wrecking plants may be permitted to anchor or moor in the channel under such conditions as the COTP deems appropriate to protect the safety of navigation.

**§ 161.915 Shifting anchorage under direction of the VTC.**

The VTC may direct any anchored vessel to shift anchorage whenever deemed necessary for the safety of vessels, the safe or expeditious passage of shipping, or the preservation or effective operation of Government installations.

**§ 161.916 Order of departure from anchorage.**

Vessels collected in any part of the VTS Area by reason of temporary closure of a channel or an impediment to navigation must get underway and depart in the order in which they arrived, unless otherwise directed by the VTC. The VTC may advance any vessel in the order of departure to expedite the movement of mails, passengers, or cargo of a perishable nature, to facilitate the passage of vessels through any channel by reason of special circumstance, or to facilitate passage through the St. Marys Falls Canal.

**§ 161.917 Maximum speed limits.**

The following speed limits indicate speed over the ground:

| Speed limit between | Speed limit | |
|---|---|---|
| | Miles/hr | Kts |
| De Tour Reef Light and Sweets Point Light | 14 | 12.2 |
| Round Island Light and Point Aux Frenes Light 21 | 14 | 12.2 |
| Munuscong Lake Lighted Buoy 8 and Everens Point | 12 | 10.4 |
| Everens Point and Reed Point | 9 | 7.8 |
| Reed Point and Lake Nicolet Lighted Buoy 62 | 10 | 8.7 |
| Lake Nicolet Lighted Buoy 62 and Lake Nicolet Light 80 | 12 | 10.4 |
| Lake Nicolet Light 80 and Winter Point (West Neebish Channel) | 10 | 8.7 |
| Lake Nicolet Light 80 and Six Mile Point Range Rear Light | 10 | 8.7 |
| Six Mile Point Range Rear light and lower limit of the St Marys Falls Canal: | | |
| Upbound | 8 | 7 |
| Down bound | 10 | 8.7 |
| Upper limit of the St Marys Falls Canal and Point Aux Pins Main Light | 12 | 10.4 |

**§ 161.918 Temporary speed limits.**

The Commander, Ninth Coast Guard District, may establish temporary speed limit regulations in the VTS Area, including amendments to the speed limits established above. The temporary speed limits established by the Commander, Ninth Coast Guard District, are published in the **Federal Register** and in Local Notices to Mariners.

**§ 161.919 Minimum speed limit through dredged channels.**

No vessel may make regular passage through any dredged channel at a speed of less than 5 statute miles per hour (4.3 knots) over the ground. Any vessel which can not maintain this speed must not enter any of the channels until permission has been granted by the VTC.

**§ 161.920 Rules for towing vessels.**

(a) Towing vessels may not drop their tows or otherwise leave them unattended south of Gros Cap Reef Light.

(b) Towing vessels engaged in shortening or lengthening tows, dropping or making up tows, transferring stores or cargo boats alongside, or waiting must stand clear and allow unobstructed passage to other vessels.

(c) Vessels of less than 61 meters (200 feet) in length may not be towed with more than 76 meters (250 feet) of tow line. Vessels of 61 meters (200 feet) or more may not be towed with a tow line longer than the length of the vessel plus 15 meters (50 feet).

**§ 161.921 Channel closure and special rules.**

Should channel obstructions or other conditions of unusual hazard so require, the COTP may order the closing of a channel, designate additional no-overtaking zones or areas of one-way traffic, or establish other temporary traffic rules. Should a channel be closed, vessels transiting in the direction of the closed channel must make preparations to be able to immediately anchor.

**§ 161.922 VTS St. Marys River Area.**

The VTSSMR Area consists of the navigable waters of the United States in the St. Marys River and lower Whitefish Bay from 45°57'00" N (De Tour Reef Light) to the south, to 46°38'42" N (Ile Parisienne Light) to the north, except the waters of the St. Marys Falls Channel. The waters of the VTS Area are delineated to the east, from Potagannissing Bay and Worsley Bay by a line from La Pointe to Sims Point.

**§ 161.923 VTS St. Marys River Users Manual.**

To obtain copies of the VTSSMR Users Manual free-of-charge, write to: Commander, U.S. Coast Guard Group Sault Ste. Marie, Sault Ste. Marie, MI 49783–9501.

**Vessel Traffic Service San Francisco (VTSSF)**

**§ 161.1101 Designated frequencies.**

(a) VTSSF uses a three-frequency communications system consisting of channels 12 (156.600 MHz), 14 (156.700 MHz), and 18A (156.900 MHz). Vessels must communicate with the VTC on the primary frequencies, as directed by the VTC.

(b) Channel 16 (156.800 MHz) is the secondary frequency for channel 12. Channel 13 (156.65 MHz) is the secondary frequency for channels 14 and 18A.

(c) The voice call for VTSSF is "SAN FRANCISCO TRAFFIC."

**§ 161.1102 Reporting points.**

All vessels in the VTSSF Area must report to the VTC when passing the following reporting points:

(a) Abeam buoy "SF" or after a Pilot has embarked;

(b) Abeam Main Ship channels buoys "1" and "2" if outbound;

(c) *Abeam Main Ship channels buoys "7" and "8";

(d) Passing under the Golden Gate Bridge;

(e) *Abeam Harding Rock inbound using the deep draft route;

(f) *Abeam Alcatraz Island;

(g) Passing under the San Francisco-Oakland Bay Bridge;

(h) *Abeam Oakland Inner Harbor buoys "5" and "6";

(i) Abeam Hunters Point;

(j) Passing under the San Mateo Bridge;

(k) Entering Redwood Creek or departing Redwood City;

(l) Passing under the Dumbarton Bridge;

(m) Entering Southampton Shoal Channel;

(n) *Passing Ferry Point, entering Richmond Inner Harbor;

(o) *Passing Point Potrero, leaving Richmond Inner Harbor;

(p) Passing under the Richmond San Rafael Bridge;
(q) Abeam the Brothers Light;
(r) Abeam San Pablo Bay Lighted Buoy "E";
(s) Entering Petaluma Channel;
(t) Entering Mare Island Strait;
(u) Passing under the Mare Island Causeway Bridge;
(v) Passing under the Carquinez Bridge;
(w) Passing under the SP Railroad Bridge at Benicia;
(x) Abeam Concord Naval Weapons Station;
(y) Passing New York Point;
(z) Passing under the Rio Vista Bridge;
(aa) Passing Sacramento Deep Water Ship Channel Light 51;
(bb) Entering/departing port of Sacramento;
(cc) Passing under the Antioch Bridge;
(dd) Passing Prisoners Point; and
(ee) Entering/departing the Port of Stockton.

**Note:** Those locations marked with an asterisk are required reporting points only when visibility is one mile or less.

**§ 161.1103 Separation zones.**

Separation zones are 150 yards wide. The boundaries of each zone are parallel to its center line. No part of any separation zone is contained in a precautionary area. The center line of separation zones connect the following geographical points:

(a) Between the SF buoy precautionary area eastward to the Alcatraz Island precautionary area:
(1) 37°45'56" N 122°38'00" W;
(2) 37°47'00" N 122°34'20" W;
(3) 37°48'08" N 122°31'00" W;
(4) 37°49'12" N 122°28'42" W (mid-span GGB); and
(5) 37°49'36" N 122°25'18" W (Alcatraz Light).

(b) Between the Alcatraz Island precautionary area northward to Pinole Shoal Channel in San Pablo Bay:
(1) 37°50'12" N 122°24'24" W;
(2) 37°51'48" N 122°24'24" W (North channel LB "A");
(3) 37°54'06" N 122°26'36" W (North channel LB "B");
(4) 37°54'48" N 122°26'54" W (North channel LB "C");
(5) 37°56'06" N 122°26'36" W (mid span Richmond-San Rafael Bridge West);
(6) 37°57'36" N 122°26'42" W;
(7) 38°00'36" N 122°24'06" W (San Pablo Bay LB "E"); and
(8) 38°01'48" N 122°22'18" W.

(c) Between the Alcatraz Island precautionary area southward almost to Anchorage 9:
(1) 37°49'06" N 122°24'12" W (Blossom Rock LBB "BR");
(2) 37°47'54" N 122°22'36" W (Pier C, Bay Bridge); and
(3) 37°46'36" N 122°22'00" W.

**§ 161.1104 Traffic lanes.**

Traffic lanes extend to but do not enter precautionary areas. Directional lanes are located on both sides of a separation zone.

(a) *Eastbound San Francisco Bay traffic lane.* From the SF buoy precautionary area to the Alcatraz Island precautionary area between the separation zone and a line connecting the following geographical points:
(1) 37°45'48" N 122°37'42" W (Main Ship Channel LWB "1");"2");
(2) 37°47'50" N 122°30'45" W;
(3) 37°46'36" N 122°22'00" W (GGB south pier);
(4) 37°48'50" N 122°26'14" W; and
(5) 37°48'42" N 122°25'06" W (Pier 45).

(b) *Westbound San Francisco Bay traffic lane.* From the SF buoy precautionary area to the Alcatraz Island precautionary area between the separation zone and a line connecting the following geographical points:
(1) 37°46'12" N 122°37'54" W (Main Ship Channel LWB "1");
(2) 37°46'54" N 122°35'18" W (Main Ship Channel LWB "7");
(3) 37°46'36" N 122°22'00" W (GGB south pier);
(4) 37°49'30" N 122°28'36" W (Lime Point);
(5) 37°50'36" N 122°27'06" W (Raccoon Strait LB "1"); and
(6) 37°51'06" N 122°24'54" W.

(c) *Northbound San Francisco Bay traffic lane.* From the Alcatraz Island precautionary area to Pinole Shoal Channel in San Pablo Bay between the separation zone and a line connecting the following geographical points:
(1) 37°50'00" N 122°23'42" W (North Channel LB "2");
(2) 37°51'42" N 122°23'42" W (North Channel LB "6");
(3) 37°54'06" N 122°26'06" W (North Channel LB "10");
(4) 37°56'06" N 122°26'30" W (East pier Richmond/San Rafael Bridge);
(5) 37°57'18" N 122°26'24" W (North Channel LB "16");
(6) 37°57'36" N 122°26'18" W (North Channel LB "18"); and
(7) 38°01'42" N 122°22'18" W (San Pablo Bay Channel LB "8").

(d) *Southbound San Francisco Bay traffic lane.* From the Alcatraz Island precautionary area to Pinole Shoal Channel in San Pablo Bay between the separation zone and a line connecting the following geographical points:
(1) 37°51'06" N 122°24'54" W;
(2) 37°51'48" N 122°24'54" W;
(3) 37°54'12" N 122°27'24" W;
(4) 37°56'06" N 122°26'42" W (West pier Richmond/San Rafael Bridge);
(5) 37°57'30" N 122°27'18" W (North Channel Light "17");
(6) 38°00'48" N 122°24'42" W; and
(7) 38°01'54" N 122°22'24" W (San Pablo Bay Channel Lt "7").

(e) *Outbound lane (lower bay).* From Anchorage 8 to the Alcatraz Island precautionary area between the separation zone and a line connecting the following geographical points:
(1) 37°47'00" N 122°21'30" W;
(2) 37°48'20" N 122°22'12" W (Pier E, SF/Oakland Bay Bridge); and
(3) 37°49'24" N 122°23'44" W.

(f) Inbound lane (lower bay). From the Alcatraz Island precautionary area to Point Avisadero between the separation zone and the shore.

**§ 161.1105 Precautionary areas.**

The precautionary areas consist of:

(a) SF buoy precautionary area. A circular area with a radius of 6 miles centered on the San Francisco Lighted Horn Buoy "SF" (37°45'00"N 122°41'50"W) with the traffic lanes fanning out from its periphery; and

(b) Alcatraz Island precautionary area. A circular area with a radius of 1200 yards centered at 37°49'39"N 122°24'25"W excluding that portion east of 122°23'44"W which is part of Anchorage 7.

**§ 161.1106 Standard route deviations.**

In the VTS Area there are established safety-related reasons for not adhering to the TSS. Common practice has identified four "STANDARD" deviations wherein it is recognized that safety may require that a vessel deviate from the TSS upon authorization of the VTC as prescribed by § 161.17(b), as follows:

(a) Vessels proceeding eastward to the port of Oakland (or Anchorages 8 and 9) may desire to use the C–D or D–E span of the San Francisco-Oakland Bay Bridge to facilitate "shaping up" for the Oakland Bar Channel or anchorages.

(b) Vessels arriving from sea proceeding eastward, whose draft is greater than 35 feet, may use the deep-draft route. In such cases, the vessel sets a course from the Golden Gate to pass west and north of Harding Rock Lighted Buoy "HR", thence east until north of Alcatraz Island, thence to selected anchorage or other destination.

(c) Vessels proceeding westward to sea, departing from any berth between Pier 25 and Pier 47 on the San Francisco waterfront may initially proceed outbound in the Eastbound Lane passing south of Alcatraz Island. Once west and clear of Alcatraz, they will cross over

into the proper Westbound Lane and continue to sea.

(d) Vessels proceeding northward departing from any berth between Pier 52 and the San Francisco-Oakland Bay Bridge may initially proceed in the Southbound Lane (Lower Bay) using A–B or D–E span of the San Francisco Bay Bridge. Once clear of this bridge, they will cross over into the Northbound Lane leaving Blossom Rock Lighted Bell Buoy "BR" to their port and continue to their destination.

**§ 161.1107 Narrow channels or fairways.**

The following areas are considered to be narrow channels or fairways for the purpose of enforcing the International and Inland Rules of the Road.

(a) All limited traffic areas and precautionary areas in San Francisco Bay east of the San Francisco Approach Lighted Horn Buoy "SF."

(b) South San Francisco Bay channels between the termination of the TSS in the vicinity of San Francisco Bay South Channel Lighted Buoy "1" and Redwood Creek Entrance Light "2."

(c) Redwood Creek between Redwood Creek Entrance Light "2" and Redwood Creek Daybeacon "21."

(d) Carquinez Strait between the Carquinez Strait highway bridge and the Benicia-Martinez highway bridge.

(e) Suisun Bay Channels between Benicia-Martinez highway bridge and Suisun Bay Light "34."

(f) New York Slough between Suisun Bay Light "30" and Point Beenar Light.

(g) San Joaquin River from Point Beenar Light to the Port of Stockton.

(h) Sacramento River Deep Water Ship Channel from Suisun Bay Light "34" to the Port of Sacramento.

(i) Alameda Naval Air Station Channel.

(j) Richmond Harbor Entrance Channel.

(k) Mare Island Strait between Mare Island Strait Light "2" and Mare Island Causeway Bridge.

**§ 161.1108 Safety procedures for vessels carrying certain dangerous cargoes in San Francisco Bay.**

(a) Owners and operators of vessels transporting any of the following dangerous cargoes within San Francisco Bay, as defined in § 80.1142 of this chapter, shall comply with the procedures outlined in paragraph (b) of this section:

(1) Vessels laden with more than 100 short tons of Class A explosives;

(2) Barges laden with more than 50 short tons of Class A explosives;

(3) All vessels carrying more than 200 short tons of oxidizing materials or blistering agents;

(4) All vessels carrying large quantities of radioactive materials as defined in § 160.203 of this chapter; and

(5) All vessels carrying in bulk any of the cargoes listed in § 160.203(e) of this chapter.

(b) Vessels carrying the commodities described in paragraph (a) of this section shall:

(1) Comply with the arrival and departure notification and waiver provisions as described in § 160.211 of this chapter.

(2) Participate in the VTS and adhere to the charted TSS except as directed by the VTS or COTP San Francisco.

(3) Transit the San Francisco bay area only when visibility is 1 mile or greater. A decrease in visibility must be immediately reported to the VTC.

(4) Limit speed to 12 knots or less. Requests to exceed the 12-knot limit shall be made to the VTC.

(c) The COTP may require that vessels described in paragraph (a) of this section be escorted by a Coast Guard vessel. When unusual navigational difficulties or hazards are anticipated, the COTP will consider requests for escorts from other vessels. Escorts will be conducted as follows:

(1) Escorts for vessels entering port will begin at the Golden Gate Bridge. The escort vessel will normally station itself 500 to 1,000 yards ahead of the escorted vessel.

(2) Continuous communications must be maintained between the vessel and its escort on channel 13. Secondary communications must be on channel 22. If necessary, emergency communications may be conducted on channel 16.

(3) Escorted vessels may depart from the TSS only with the approval of the escort vessel and the VTS.

**§ 161.1109 VTS San Francisco Area.**

The VTSSF Area includes San Francisco Bay; its seaward approaches south of 38°00′ N; east of 123°07′ W; and north of 37°27′ N; and its tributaries as far north as Petaluma River Entrance Lights "1" and "2", and the Mare Island Causeway Bridge, as far east as the port of Stockton on the San Joaquin River, as far north as the port of Sacramento on the Sacramento River and as far south as Redwood City.

**§ 161.1110 VTS San Francisco Users Manual.**

To obtain copies of the VTS San Francisco Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service San Francisco, Yerba Buena Island, San Francisco CA 94130–5013.

## Vessel Traffic Service Puget Sound (VTSPS)

**§ 161.1301 Applicability.**

The rules in subpart A of this part also apply to the operation of each small passenger-carrying vessel certificated in accordance with 46 CFR parts 175 through 187 (subchapter T) when carrying more than six passengers for hire.

**§ 161.1302 Navigation requirements.**

(a) Tank ships larger than 125,000 deadweight tons bound for a port or place in the United States may not operate in waters of the United States east of a line extending from Discovery Island Light to New Dungeness Light, and all points in the Puget Sound area north and south of these lights.

(b) Participating vessels are exempt from the requirement in § 161.21(c) to keep the center of precautionary "RB" to port.

**§ 161.1303 Cooperative Vessel Traffic Management System (CVTMS).**

(a) The United States and Canada signed a formal Agreement in 1979 to establish the Cooperative Vessel Traffic Management System (CVTMS). The purpose of the CVTMS is to promote safe and efficient movement of vessel traffic, while minimizing the risk of pollution to the waters covered by the Agreement.

(b) To this end, the VTSPS Area, described in § 161.1318, is divided into three Zones; the Tofino Zone, the Vancouver Zone, and the Seattle Zone. Vessel traffic in each Zone is managed by the governing VTC. By the Agreement, these rules grant each VTC traffic management authority within its Zone. Additional information is contained in subpart C of this part.

(c) The Tofino Zone comprises that portion of the VTSPS Area west of 124°04′00″ W. All vessels must conduct communications with "Tofino Traffic" on channel 74 (156.725 MHz) upon entering or while operating in this area.

(d) The Vancouver Zone comprises that portion of the VTSPS Area north of line drawn from the tip of Church Point on the Canadian shoreline to position 48°17′04″ N 123°14′51″ W; thence northeasterly to Hein Bank Lighted Bell Buoy; thence northeasterly to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellet Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon "1"; thence along the shoreline of Sucia Island to a point at 48°46′1″ N 122°53′3″

W; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence northerly to the western most tip of Birch Point at 48°56'36" N 122°49'12" W. All vessels must conduct communications with "Vancouver Traffic" on channel 11 (156.55 MHz) upon entering or while operating in this area.

(e) The Seattle Zone comprises all the remaining portions of the VTSPS Area.

**§ 161.1304 Designated frequencies.**

(a) VTSPS uses a two-frequency communication system. Channel 14 (156.700 MHz) and channel 5A (156.250 MHz) are the primary frequencies. Vessels must communicate with "SEATTLE TRAFFIC" on the primary frequencies, as directed by the VTC.

(b) Channel 13 (156.650 MHz) is the secondary frequency throughout the VTSPS Area.

**§ 161.1305 Initial report.**

Vessels that will be entering from one of the zones described in § 161.1303 and that have been making reports to another VTC are exempt from making this report.

**§ 161.1306 Underway report.**

In addition to the requirements of § 161.42, a vessel must report when entering or beginning to navigate in a VTS Zone.

**§ 161.1307 Follow-up reports.**

In addition to the requirements of § 161.43, a vessel must report when crossing a VTS Zone boundary, to the receiving VTC, on their designated frequency.

**§ 161.1308 Ferry reports.**

(a) Subject to paragraph (b) of this section, ferries operating in the VTSPS Area on a set schedule and route, both of which have been furnished to the VTC, need not make the following reports:

(1) Initial report (§ 161.41);

(2) Underway report (§ 161.42);

(3) Final report (§ 161.45); and

(4) Intent to cross a TSS (§ 161.43(2)).

(b) Ferries whose schedule and route have been furnished to the VTC, must report the following at least 5 minutes but not more than 10 minutes prior to departure from a ferry terminal:

(1) Name of ferry;

(2) Time and point of departure; and

(3) Destination.

(c) Ferries and vessels carrying passengers for hire must, when crossing the TSS, make safe passing arrangements on channel 13 or the designated VTS frequency with any vessel participating in the VTS and following the TSS, if their transit carries them within one half-mile of that vessel.

**§ 161.1309 Local harbor reports.**

(a) When a vessel moves within a three mile radius of it's point of departure within the VTSPS Area, the movement is considered a local harbor movement. Subject to paragraph (b) of this section, a vessel making a local harbor movement is exempted from the reporting requirements for initial report (§ 161.41), underway report (§ 161.42), and final report (§ 161.45).

(b) At least 5 minutes, but not more than 45 minutes, before a vessel makes a local harbor movement as described under paragraph (a) of this section, the Master, Pilot, or person directing the movement of the vessel shall report the following information to the VTC:

(1) Name and type of vessel;

(2) Location of departure;

(3) Time of departure;

(4) Destination and ETA; and

(5) General description of operation to be performed.

(c) The Master, Pilot, or person directing the movement of the vessel shall report any changes to the information reported under paragraph (b) of this section, except that departing and ETA times must be reported only if they vary by 15 minutes or more from the report.

**§ 161.1310 Separation zones.**

(a) Each separation zone, except those west of Port Angeles, is 500 yards wide and centered on a line connecting the points listed in paragraph (c) of this section. Separation zones west of Port Angeles are described in the CVTMS rules, contained in subpart C of this part.

(b) The two boundaries of each separation zone are parallel to its center line, and extend to and intersect with the boundary of a precautionary area. No part of any separation zone is contained in a precautionary area.

(c) The latitudes and longitudes describing the center lines of the separation zones are:

(1) Between the Port Angeles and "SA" precautionary areas:

48°12'22" N 123°06'30" W
48°11'37" N 122°52'40" W

(2) Between the Port Angeles and "RA" precautionary areas:

48°16'26" N 123°06'30" W
48°19'06" N 123°00'09" W

(3) Between the "RA" and "SA" precautionary areas:

48°18'45" N 122°57'30" W
48°13'04" N 122°51'24" W

(4) Between the "RA" and "RB" precautionary areas:

48°20'26" N 122°57'01" W
48°24'14" N 122°48'00" W
48°25'28" N 122°46'23" W

(5) Between the "RB" and "SA" precautionary areas:

48°25'12" N 122°44'40" W
48°24'10" N 122°44'12" W
48°13'22" N 122°48'55" W

(6) Between the "SA" and "SC" precautionary areas:

48°10'48" N 122°46'58" W
48°06'48" N 122°39'36" W
48°02'28" N 122°38'20" W

(7) Between the "SG" and "SE" precautionary areas:

48°01'20" N 122°37'37" W
47°57'53" N 122°34'42" W
47°55'46" N 122°30'14" W

(8) Between the "SE" and "SF" precautionary areas:

47°54'49" N 122°29'17" W
47°46'31" N 122°26'23" W

(9) Between the "SF" and "SG" precautionary areas:

47°45'19" N 122°26'21" W
47°40'19" N 122°27'38" W

(10) Between the "SG" and "T" precautionary areas:

47°39'05" N 122°27'42" W
47°35'12" N 122°27'06" W

(11) Between the "T" and "TC" precautionary areas:

47°33'59" N 122°26'47" W
47°26'53" N 122°24'12" W
47°23'07" N 122°21'08" W
47°19'54" N 122°26'37" W

(12) Between the "CA" and "C" precautionary areas:

48°44'15" N 122°45'39" W
48°41'39" N 122°43'34" W

**§ 161.1311 Traffic lanes east of Port Angeles.**

(a) Except as provided in paragraph (c) of this section, each traffic lane consists of the area within two parallel boundaries that are 1000 yards apart, and that extend to and intersect with, the boundary of a precautionary area. One of these parallel boundaries is parallel to and 250 yards from the center line of a separation zone.

(b) No part of any traffic lane is contained in a precautionary area.

(c) The traffic lane in Rosario Strait consists of the area enclosed by a line beginning at 48°26'50" N 122°43'27" W; thence northerly to 48°36'06" N 122°44'56" W; thence northeasterly to 48°39'18" N 122°42'42" W; thence westerly and northwesterly along the

boundary of precautionary area "C" to 48°39'37" N 122°43'58" W; thence southerly to 48°38'24" N 122°44'08" W; thence southwesterly to 48°36'08" N 122°45'44" W; thence southerly to 48°29'30" N 122°44'41" W; thence southwesterly to 48°27'37" N 122°45'27" W; thence northeasterly and southeasterly along the boundary of precautionary area "RB" to the point of beginning.

**§ 161.1312 Precautionary areas east of Port Angeles.**

The precautionary areas are:

(a) Port Angeles precautionary area. An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N 123°06'30" W, thence due north to 48°17'10" N 123°06'30" W, thence southwesterly to 48°10'00" N 123°27'38" W, thence due south to the shoreline, thence along the shoreline to the point of beginning;

(b) Precautionary area "RA." A circular area of 2,500 yards radius centered at 48°19'46" N 122°58'34" W;

(c) Precautionary area "RB." A circular area of 2,500 yards radius centered at 48°26'24" N 122°45'12" W. (The center of precautionary area "RB" is not marked by a buoy);

(d) Precautionary area "C." A circular area of 2,500 yards radius centered at 48°40'34" N 122°42'44" W;

(e) Precautionary area "CA." A circular area of 2,500 yards radius centered at 48°45'19" N 122°46'26" W;

(f) Precautionary Area "SA." A circular area of 4,000 yards radius centered at 48°11'28" N 122°49'43" W;

(g) Precautionary area "SC." A circular area of 1,250 yards radius centered at 48°01'52" N 122°38'05" W;

(h) Precautionary area "SE." A circular area of 1,250 yards radius centered at 47°55'25" N 122°29'29" W;

(i) Precautionary area "SF." A circular area of 1,250 yards radius centered at 47°45'55" N 122°26'11" W;

(j) Precautionary area "SG." A circular area of 1,250 yards radius centered at 47°39'42" N 122°27'48" W;

(k) Precautionary area "T." A circular area of 1,250 yards radius centered at 47°34'34" N 122°27'00" W; and

(l) Precautionary area "TC." A circular area of 1,250 yards radius centered at 47°19'30" N 122°27'19" W.

**§ 161.1313 Rosario Strait and Guemes Channel rules.**

Sections 161.1315 through 161.1317 apply to the waters of Rosario Strait bounded to the south by the center of Precautionary Area "RB" and to the north by the center of Precautionary Area "C," and in Guemes Channel.

**§ 161.1314 Before entering Rosario Strait or Guemes Channel.**

(a) At least 15 minutes before a vessel enters Rosario Strait or Guemes Channel, the Master, Pilot, or person directing the movement of the vessel shall report the vessel's ETA and point of entry to the VTC.

(b) A vessel 40,000 deadweight tons or greater must receive permission to enter Rosario Strait or Guemes Channel from the VTC.

**§ 161.1315 Entering and transiting Rosario Strait or Guemes Channel.**

(a) A vessel may not enter Rosario Strait or Guemes Channel unless:

(1) The entry report required in § 161.1314(a) of this subpart has been made;

(2) Permission, if required by § 161.1314(b) of this subpart, is received;

(3) The communications rules of this part can be complied with;

(4) The vessel is free of any condition which may impair its navigation, such as fire, defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective sounding device, or similar condition or defect; and

(5) During periods of reduced visibility of 2 miles or less, the radar is operating and observed by a qualified operator.

(b) No vessel 40,000 deadweight tons or greater may meet or overtake another vessel of 300 gross tons or greater in Rosario Strait or Guemes Channel.

**§ 161.1316 Passing arrangements in Rosario Strait or Guemes Channel.**

Before a vessel meets, overtakes, or crosses ahead of any other vessel listed in §§ 161.11(b) or 161.1301(a) (1) and (2), in Rosario Strait or Guemes Channel, the Master, Pilot, or person directing the movement of the vessel shall make safe passing arrangements on the Bridge-to-Bridge Radio Telephone Act frequency, channel 13 (156.65 MHz), or the designated VTS frequency.

**§ 161.1317 VTS Puget Sound Area.**

(a) The VTSPS Area consists of all navigable waters of the U.S. bounded by the Washington State coastline and a line commencing where the Washington State coastline intersects latitude 48°10'00" N on Cape Alava; thence drawn due west to the point of intersection with the U.S. Territorial Sea Boundary; thence northward and eastward along the U.S. Territorial Sea Boundary to its intersection with the U.S./Canada International Boundary; thence along the U.S./Canada International Boundary through the waters known as the Strait of Juan de Fuca, Haro Strait, Boundary Pass, and the Strait of Georgia to a point of intersection with the Washington State coastline at the International Boundary Range C Rear Light.

(b) This area includes all of the following northwestern Washington waters: Puget Sound, Hood Canal, Possession Sound, the San Juan Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, the U.S. waters of the Strait of Juan de Fuca and Georgia Strait, and all waters adjacent to the above.

**§ 161.1318 VTS Puget Sound Users Manual.**

To obtain copies of the VTS Puget Sound Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134–1192.

**Vessel Traffic Service Prince William Sound (VTSPWS)**

**§ 161.1701 Designated frequency.**

(a) The primary frequency for communicating with the VTC is 156.65 MHz (channel 13).

(b) The VTC also monitors channel 16. In the event of communications failure on channel 13, VTS communications must be on channel 16.

(c) The voice call for VTSPWS is "VALDEZ TRAFFIC."

**§ 161.1702 Initial report.**

(a) In addition to the initial reporting requirements specified in § 161.41, the Master, Pilot, or person directing the movement of a tank ship greater than 20,000 DWT shall report the vessels name and location at least three hours before a vessel enters or begins to navigate in the VTS Area.

(b) Fishing vessels maneuvering at various courses and speeds while engaged in fishing need only report their location to the VTC.

(c) Tank ships must also report their draft and whether laden or unladen, and if laden, what type of cargo is on board.

(d) Participating vessels intending to enter the VTS Area via the Cape Hinchinbrook Entrance shall report the information in § 161.41 at least 3 hours before the vessel enters the VTS Area at Cape Hinchinbrook Entrance. This is to enable the VTC to provide the best possible traffic advisories to tankers using the Safety Fairway outside the Cape Hinchinbrook Entrance.

**§ 161.1703 Follow-up report.**

In addition to the reporting requirements contained in § 161.43, the Master, Pilot, or person directing the movement of the vessel shall report the

vessels name and location at least 30 minutes before a vessel enters or begins to navigate in the VTS Area through Hinchinbrook entrance.

**§ 161.1704 Reporting points.**

All vessels must report to the VTC when passing the following reporting points for frequented routes in the VTSPWS Area.

(a) Cape Hinchinbrook—Valdez:
(1) Hinchinbrook Entrance;
(2) Naked Island;
(3) *Reef Island;
(4) *Tongue Point; and
(5) *Entrance Island.
(b) Cape Hinchinbrook—Cordova:
(1) Cape Hinchinbrook; and
(2) Johnstone Point.
(c) Cape Hinchinbrook—Whittier:
(1) Cape Hinchinbrook; and
(2) Naked Island.
(d) Valdez—Whittier:
(1) *Entrance Island;
(2) *Tongue Point;
(3) *Point Freemantle; and
(4) Granite Point.
(e) Valdez—Cordova:
(1) *Entrance Island;
(2) *Tongue Point;
(3) *Reef Island; and
(4) Red Head.

Note: The reporting points marked with an asterisk are required only when specified by the VTC.

**§ 161.1705 Traffic lanes.**

The traffic lanes are 1,504 yards wide beginning at Hinchinbrook Entrance and decrease in width to 1001 yards at Valdez Arm west of Bligh Reef, where they terminate. The traffic lanes are as follows:

(a) The inward bound traffic lane is between the separation zone and a line connecting the following points:

60°58′09″ N 146°46′16″ W
60°49′07″ N 146°58′42″ W
60°35′00″ N 147°01′42″ W
60°15′45″ N 146°44′20″ W

(b) The outward bound traffic lane is between the separation zone and a line connecting the following points:

60°59′01″ N 146°48′37″ W
60°50′04″ N 147°03′35″ W
60°34′36″ N 147°06′48″ W
60°17′38″ N 146°51′20″ W

**§ 161.1706 Separation zone.**

The separation zone is 2,001 yards wide beginning at Hinchinbrook Entrance and decreases in width to 1,001 yards at Valdez Arm west of Bligh Reef, where it terminates. The separation zone is bounded by lines connecting the following points:

60°58′43″ N 146°47′50″ W
60°49′47″ N 147°02′06″ W
60°34′43″ N 147°05′16″ W
60°17′05″ N 146°49′18″ W
60°16′20″ N 146°46′28″ W
60°34′53″ N 147°03′14″ W
60°49′23″ N 147°00′08″ W
60°58′26″ N 146°47′02″ W

**§ 161.1707 One-way traffic in Valdez Narrows.**

(a) The Valdez Narrows One-Way Traffic Area consists of the navigable waters of the United States in Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307° True from Tongue Point at 61°02′06″ N 146°40′00″ W, and southwest of a line bearing 307° True from Entrance Island Light at 61°05′06″ N 146°36′42″ W.

(b) The Valdez Narrows One-Way Traffic Area is restricted to one-way traffic whenever a tank ship of 20,000 DWT or more is navigating therein.

(c) A tank ship of 20,000 DWT or more may not enter Valdez Narrows One-Way Traffic Area unless:

(1) It complies with the procedures for entering Valdez Narrows in § 161.1708; and

(2) It complies with the rules for tank ships in the VTS Area in § 161.1710.

**§ 161.1708 Entering Valdez Narrows.**

A vessel described in § 161.11(b) may not enter the Valdez Narrows One-Way Traffic Area unless:

(a) Permission to enter is obtained from the VTC;

(1) Outbound vessels will not be granted permission to enter Valdez Narrows if any inbound tank ship will be north of 61° N by the time the outbound vessel is abeam Tongue Point.

(2) Inbound vessels will not be granted permission to proceed north of 61° N until outbound tank ship traffic has exited the Valdez Narrows One-Way Zone at Tongue Point.

(b) Any directions from the VTC to remain separated from another vessel are complied with;

(c) The radio equipment on the vessel that is used to transmit reports required by the VTSPWS rules is in operation;

(d) The radar on a vessel equipped with radar is in operation and manned; and

(e) The vessel is free of any condition that may impair its navigation, such as fire, defective steering equipment, defective propulsion machinery, or similar condition or defect.

**§ 161.1709 Communications in Valdez Narrows.**

Before a vessel meets, overtakes, or crosses ahead of any vessel in the Valdez Narrows One-Way Traffic Area, the Master, Pilot, or person directing the movement of the vessel shall transmit the intentions of his vessel to any other vessel, for the purpose of making safe passing arrangements, on channel 13 (156.650 MHz).

**§ 161.1710 Tank ships in the VTS Area.**

(a) Each tank ship of 20,000 DWT or more operating in the VTS Area must:

(1) Have two separate marine radar systems for surface navigation, one of which is operating and the other is either operating or capable of immediate operation;

(2) Have an operating Loran C receiver;

(3) Have an operating rate of turn indicator; and

(4) Have at least two radiotelephones capable of operating on the designated VTS frequency, one of which is capable of battery operation.

(b) No laden tank ship of 20,000 DWT tons or more may transit that portion of Valdez Narrows between Middle Rock and Potato Point at a speed in excess of six knots.

(c) No tank ship of 20,000 DWT tons or more may transit the Valdez Narrows One-Way Traffic Area at a speed in excess of twelve knots.

(d) While in the VTS Area, if a tank ship of 20,000 DWT tons or more is unable to comply with paragraph (a)(1) of this section, the Master, Pilot, or person directing the movement of the vessel shall immediately notify the VTC.

**§ 161.1711 Tug assistance for tank ships.**

(a) For the purposes of this section, tug assistance means the use of a sufficient number of tugs properly manned and positioned, with enough power and maneuverability to enable the vessel to accomplish the intended maneuvers safely. Factors to be considered in determining the amount of tug assistance needed are:

(1) Existing and expected conditions of wind, tide and current; and

(2) Size, displacement and maneuvering capability of the vessel.

(b) No laden tank ship of 20,000 DWT or more may transit the Valdez Narrows One-Way Traffic Area unless:

(1) A sufficient number of tugs are standing by at the northern end of Valdez Narrows; and

(2) Tug assistance is used when directed by the VTC.

(c) The Master, Pilot, or person directing the movement of any tank ship required to use tug assistance shall insure that there are sufficient persons positioned on the vessel to handle lines to tugs as needed.

**§ 161.1712 Special circumstances.**

(a) Extension of the Valdez Narrows One-Way Traffic Area may occur when the VTC determines that hazardous ice

conditions exist in Valdez Arm. In these instances:

(1) The Valdez Narrows One-Way Traffic Area will be extended south to a line from 62°5'218" N 147°05'30" W, to 60°48'24" N 146°47'30" W;

(2) The extended one-way traffic area will apply to all vessels defined in § 161.11(b), except: Passenger and commercial vessels of less than 1,000 gross tons; tank ship escort vessels; and vessels of the Alaska Marine Highway system.

(3) All northbound vessels to which these provisions apply shall not proceed north of 60°40'00" N, unless authorized by the VTC.

(b) The VTC may impose tank ship movement restrictions when steady wind conditions above 30 knots (are anticipated) (exist), as follows:

(1) When the steady wind component in Valdez Narrows or Port Valdez exceeds 40 knots, no tank ship of 20,000 DWT or more will be given permission to enter Valdez Narrows one-way zone inbound, or get underway from the berth outbound unless specifically exempted by the VTC.

(2) When the steady wind component exceeds 30 knots, ship assist vessel escorts will be specified by the VTC for inbound and outbound tank ships of 20,000 DWT or more for the transit of Valdez Narrows and Port Valdez.

(c) The VTC may impose tank ship movement restrictions when steady wind conditions above 40 knots (are anticipated) (exist), as follows:

(1) Underway tank ships must not anchor in the anchorage designated in § 110.233 of this chapter.

(2) Tank ships already anchored must:

(i) Maintain a constant bridge watch and determine position with sufficient frequency to enable the vessel to get underway safely if the anchor drags; and

(ii) Place the entire main propulsion system on immediate standby.

(3) Anchored tank ships must get underway and proceed as directed by the VTC when:

(i) The steady wind component exceeds 45 kts; or

(ii) Any dragging of the anchor occurs.

### § 161.1713 VTS Prince William Sound Area.

The VTS Area consists of the navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between longitudes 146°30'00" W and 147°20'00" W and includes Valdez Arm, Valdez Narrows and Port Valdez.

### § 161.1714 VTS Prince William Sound Users Manual.

To obtain copies of the VTS Prince William Sound Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service Prince William Sound, P.O. Box 486, Valdez, AK 99686–0486.

## Subpart C—Other Vessel Traffic Management Systems

Note: Since the rules in this subpart relate to traffic management functions, they are included in this part, however, they are independent of the National VTS regulations contained in subparts A and B of this part.

## Juan De Fuca Region Cooperative Vessel, Traffic Management System (CVTMS), General Rules

### § 161.2000 Purpose.

Sections 161.2000 to 161.2066 prescribe rules for vessel operation in the CVTMS. These rules are intended to enhance safe and expeditious vessel traffic movement, to prevent groundings and collisions, and to minimize the risk of property damage and pollution to the marine environment.

### § 161.2001 Applicability.

(a) The CVTMS is established as a program jointly managed by the United States and Canada. The CVTMS Area is divided into zones, which are administered solely by the United States or Canada. The appropriate Vessel Traffic Management Center administers, within its zone, the regulations issued by both nations. Each set of regulations applies only to the waters over which the issuing nation has jurisdiction and each nation will enforce only its own set of regulations. With the exception of the vessels listed in § 161.2002, the United States' regulations apply in the CVTMS Area to:

(1) Each vessel of 30 meters (98 feet) or more in length; and

(2) Each vessel that is engaged in towing alongside or astern, or in pushing ahead, one or more vessels or objects, other than fishing gear, where:

(i) The combined overall length of the vessel towing, the towing apparatus, and the vessel or object towed is 45 meters (147 feet) or more; or

(ii) The vessel or object towed is 20 meters (65 feet) or more in overall length.

(b) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose references horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

### § 161.2002 Vessel exemptions.

The rules contained in §§ 161.2012 through 161.2036, do not apply to:

(a) Fishing vessels of less than 300 gross tons;

(b) Unmanned vessels or vessels which are being towed or pushed, or;

(c) Vessels engaged in towing or pushing within a log booming ground.

### § 161.2003 Definitions.

The following definitions supplement the definitions contained in subpart A of this part. As used in §§ 161.2000 through 161.2066:

*Authority* means the Commissioner of the Canadian Coast Guard or the Commandant of the United States Coast Guard.

*Berth* means any wharf, pier, anchorage, or mooring buoy.

*Cooperative Vessel Traffic Management Center (CVTMC)* means the shore based facility established by the appropriate authority for managing traffic in the CVTMS.

*Cooperative Vessel Traffic Management System Center direction (CVTMC direction)* means an instruction issued by a vessel traffic management center to one or more ships, for the purpose of managing vessel traffic.

*Cooperative Vessel Traffic Management System (CVTMS)* means the system of vessel traffic management established and jointly operated by Canada and the United States within the waters of the CVTMS Area.

*Cooperative Vessel Traffic Management System Area (CVTMS Area)* means the waters described in § 161.2054.

*National vessel traffic service* means a vessel traffic service which is operated and administered solely by Canada or the United States and is not a part of the Cooperative Vessel Traffic Management System.

*Zone* means a geographic subdivision of the CVTMC Area, defined for purposes of allocating responsibility for vessel traffic management to one of the authorities.

### § 161.2004 Vessel operation in the CVTMS Area.

No person, except those authorized to do so under § 161.2008, may cause or authorize the operation of a vessel in the CVTMS Area contrary to the rules in §§ 161.2000 through 161.2066.

**§ 161.2005 CVTMC directions.**

(a) During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in a CVTMS Zone, the CVTMC may issue directions to control and supervise traffic, and may specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters of the CVTMS Zone.

(b) When a vessel is navigating in an unsafe manner or with improperly functioning equipment, the CVTMC may direct the vessel's movement, including directing it to anchor or moor.

(c) The Master, Pilot, or person directing the movement of a vessel shall comply with each direction issued to the vessel.

**§ 161.2006 Requirement to carry regulations.**

(a) The Master, Pilot, or person directing the movement of a vessel shall ensure that a copy of the current Cooperative Vessel Traffic Management Systems regulations, 33 CFR 161.2000–161.2066, is available on board the vessel when it is in the CVTMS Area. The regulations are reprinted in the CVTMS Users Manual.

(b) A CVTMS Users Manual, which contains the regulations and other useful information for operating in the CVTMS area, is available free-of-charge from:

Officer-in-Charge, Transport Canada, Canadian Coast Guard Vessel Traffic, Management Centre, P.O. Box 190, Ucluelet, BC Canada, VOR 3AO, Phone: (604) 726–7777

or

Commanding Officer, U.S. Coast Guard Vessel Traffic Service, 1519 Alaskan Way South, Seattle, Washington 98134, Phone: (206) 286–5640

or

Officer-in-Charge, Transport Canada, Canadian Coast Guard Vessel Traffic Management Centre, Room 1006 Kapilano 100, Park Royal West Vancouver, BC Canada, V7T 1A2, Phone: (604) 666–6011.

**§ 161.2007 Laws and regulations not affected.**

Unless expressly stated otherwise, nothing in §§ 161.2000 through 161.2066 is intended to relieve any person from complying with any other applicable laws or regulation.

**§ 161.2008 Authorization to deviate from these rules; equivalent procedures.**

(a) Where these regulations require a particular procedure, the Commander, Thirteenth Coast Guard District may, upon written request, authorize any other procedure for use in U.S. waters if it is determined that such other procedure provides a level of safety equivalent to that provided by the required procedure. An application for an authorization must state the need and fully describe the proposed procedure.

(b) The CVTMC may, upon request, issue an authorization to deviate from any rule in §§ 161.2000 through 161.2066, for a voyage or part of a voyage on which a vessel is embarked or about to embark.

**§ 161.2010 Emergencies.**

In an emergency, the Master, pilot, or person directing the movement of the vessel may deviate from any rule in §§ 161.2000 through 161.2066, to the extent necessary to avoid endangering persons, property or the environment, and shall report the deviation to the CVTMC as soon as possible.

**Communications Rules**

**§ 161.2012 Radio listening watch.**

(a) When underway or anchored or moored to a buoy, in the CVTMS Area, the Master, Pilot, or person responsible for directing the movement of a vessel shall ensure that a radiotelephone listening watch is maintained on the frequency designated in § 161.2014 for the sector of the CVTMS Area in which the vessel is operating, except when transmitting on that frequency.

(b) All reports and communications required by these rules must be made to the CVTMC on its designated frequency using a radiotelephone that is maintained in effective operating condition and is capable of operation on the navigational bridge of the vessel, or, in the case of a dredge, at its main control station.

(1) The radio listening watch required by paragraph (a) of this section may be maintained in a location other than the vessel's navigational bridge when the vessel is anchored or moored to a buoy.

**§ 161.2014 Use of designated frequencies.**

(a) In accordance with Federal Communications Commission regulations, no person may use the frequency or frequencies designated in this section to transmit any information other than information necessary for the safety of vessel traffic.

(b) All transmissions on the CVTMS frequencies shall be initiated on low power; high power may only be used if low power communications are unsuccessful.

(c) The frequencies to be used when communicating with the CVTMC and with other vessels are as follows:

| Zone | Primary freq. | | Secondary freq. | |
|---|---|---|---|---|
| | MHz | Channel | MHz | Channel |
| Tofino Zone | 156.725 | 74 | 156.550 | 11 |
| Seattle Zone | 156.700 | 14 | 156.650 | 13 |
| Vancouver Zone | 156.550 | 11 | 156.725 | 74 |

**§ 161.2016 Time.**

Each report required by §§ 161.2000 through 161.2066 must specify time using:

(a) The time zone in effect in the CVTMS Area; and

(b) The 24-hour clock system.

**§ 161.2018 English language.**

Each report required by §§ 161.2000 through 161.2066 must be made in clear, unbroken English language.

**§ 161.2020 Radiotelephone equipment failure.**

(a) If the radiotelephone required by § 161.2012 ceases to operate, the Master, Pilot, or person directing the movement of the vessel shall ensure that it is restored to operating condition as soon as possible. The failure of a vessels radiotelephone equipment, while the vessel is underway, will not in itself constitute a violation of these rules, nor will it obligate the vessel to moor or anchor; however, required reports must be made by other means, if possible.

(b) A vessel that cannot meet the radiotelephone requirements of these rules may not get underway in the CVTMS Area without permission from the CVTMC.

**§ 161.2022 Report of radio failure.**

Whenever the Master, Pilot, or person directing the movement of the vessel deviates from any rule in §§ 161.2000 through 161.2066 because of a radio

failure, the deviation and radio failure must be reported to the CVTMC as soon as possible by whatever means available.

**§ 161.2024 Report of impairment to the operation of the vessel.**

The Master, Pilot, or person directing the movement of the vessel in the CVTMS Area shall report to the CVTMC as soon as possible:

(a) Any condition on the vessel that may impair its navigation, such as fire, defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective echo depth sounding device, defective communications equipment, defective navigational lighting, or similar condition or defect;

(b) Any tow that the towing vessel is unable to control or can control only with difficulty; or

(c) When involved in a grounding, collision, or ramming of a fixed or floating object.

**§ 161.2026 Miscellaneous reports.**

The Master, Pilot, or person directing the movement of the vessel within the CVTMS Area should report to the CVTMC whenever any of the following circumstances are observed:

(a) Another vessel in apparent difficulty or involved in a casualty;

(b) Any obstruction which is dangerous to navigation;

(c) Any aid to navigation which is malfunctioning, damaged, missing, or off position;

(d) Any pollution of the marine environment;

(e) Any vessel which may be creating a hazard to traffic;

(f) Any other danger to navigation including adverse weather conditions; or

(g) Any significant change in the information previously supplied under this section.

**Vessel Movement Reporting System (VMRS) Rules**

**§ 161.2027 Local harbor report.**

(a) When a vessel moves and remains within a three nautical mile radius of its point of departure in the CVTMS Area, the movement is a local harbor movement. A vessel making a local harbor movement is exempted from the reporting requirements for an initial report (§ 161.2028), underway report (§ 161.2031), and final report (§ 161.2036).

(b) At least 5 minutes but not more than 45 minutes before a vessel makes a local harbor movement under paragraph (a) of this section, the Master, Pilot, or person directing the movement of the vessel shall report or cause to be reported the following information to the CVTMC:

(1) Name and type of vessel;

(2) Position of departure;

(3) Time of departure;

(4) Destination, route, and ETA; and

(5) General description of operation to be performed.

(c) The Master, Pilot, or person directing the movement of the vessel shall report or cause to be reported any changes from the information reported under paragraph (b) of this section, except that departing or ETA times must be reported only if they vary by 15 minutes or more from the report.

**§ 161.2028 Initial report.**

(a) At least 15 minutes but not more than 2 hours before a vessel enters or begins to navigate in the CVTMS Area, the Master, Pilot, or person directing the movement of the vessel shall report by radiotelephone or telephone the following information to the appropriate CVTMC:

(1) The type and name of the vessel;

(2) The point of entry into the CVTMS Area;

(3) Estimated time of entering or beginning to navigate in the CVTMS Area;

(4) Destination, ETA at destination, and route in the CVTMS Area;

(5) Anticipated speed of the vessel (in knots);

(6) Length and deepest draft of the vessel;

(7) Whether the vessel or its tow is bound to or from a U.S. port and is carrying any certain dangerous cargo as listed in § 160.203 (a) through (e) on board;

(8) Any impairment to the operation of the vessel as described in § 161.2024 (a) and (b); and

(9) Any planned maneuvers that may impede traffic.

(b) Vessels making movements that require local harbor reports as specified in § 161.2027, are exempt from making this report.

(c) Vessels that will be entering from a National VTS Area and have previously reported the above information to another VTC are exempt from making this report.

**§ 161.2031 Underway report.**

As soon as a vessel enters or begins to navigate in the CVTMS Area, the Master, Pilot, or person directing the movement of the vessel shall report the name and location of the vessel to the CVTMC.

**§ 161.2032 Zone boundary and calling-in point report.**

(a) When a vessel crosses a zone boundary, the Master, Pilot, or person directing the movement of the vessel must report the name and location of the vessel to each CVTMC by radiotelephone on the designated frequency for the zone in which the vessel is leaving and on the designated frequency for the zone that the vessel is entering.

(b) When directed to do so by the CVTMC, vessels must report their name and location on either a one-time basis or as a series of reports.

**§ 161.2034 Follow-up report.**

The Master, Pilot, or person directing the movement of a vessel shall report any information which has changed since the previous report, including, but not limited to, ETA, speed, destination, and route.

**§ 161.2036 Final report.**

No later than 30 minutes after a vessel anchors in, moors in, or departs from the CVTMS Area, the Master, Pilot, or person directing the movement of a vessel shall report the place of anchoring, mooring, or departure to the CVTMC.

**Traffic Separation Scheme (TSS) Rules**

**§ 161.2052 Vessel operation in the TSS.**

The Master, Pilot, or person directing the movement of a vessel in the TSS described in §§ 161.2062 through 161.2066, shall comply with Rule 10 of the International Regulations for Prevention of Collisions at Sea, 1972.

**Descriptions and Geographic Coordinates**

**§ 161.2054 CVTMS Area.**

For the purpose of these rules, the CVTMS Area consists of the waters from a point in the Pacific Ocean at 48°23'30" N, 124°48'37" W; thence due east to the Washington State coast at Cape Flattery; thence southeastward along the Washington coastline to New Dungeness Light; thence northerly to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to Rosario Strait Traffic Lane Entrance Lighted Horn Buoy "R"; thence to Hein Bank Lighted Bell Buoy; thence to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellet Bluff Light; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon 1; thence along the shoreline of Sucia Island to a point at 48°46'06" N, 122°53'30" W; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence to Birch Point at 48°56'33" N 122°49'18" W; thence along the shoreline to a point where the shoreline intersects

the 49° north parallel of latitude; thence due west to the Canadian shoreline at Maple Beach; thence along the shoreline around Point Roberts to a point where the shoreline intersects the 49° north parallel of latitude at Boundary Bluff; thence due west to a point at 49°00'00" N 123°19'14" W; thence southerly to Active Pass Light; thence to East Point on Saturna Island; thence to Point Fairfax Light on Moresby Island; thence to Discovery Island Light; thence to Trail Island Light; thence to Brotchie Ledge Light; thence to Albert Head Light; thence westward along the Canadian shoreline to the intersection of the shoreline with 48°35'45" N near Bonilla Point; thence due west to a point at 48°35'45" N 124°47'30" W; thence southerly along a rhumb line to the starting point at 48°35'45" N 124°47'30" W.

**§ 161.2056 Tofino Zone.**

The Tofino Zone comprises that portion of the CVTMS Area west of 124°40'00" W.

**§ 161.2058 Seattle Zone.**

The Seattle Zone comprises that portion of the CVTMS Area in the Strait of Juan de Fuca, bordered on the west by 124°40'00" W, and on the north and east by lines drawn from the tip of Church Point on the Canadian shoreline to Race Rocks Light; thence easterly to the intersection the U.S./Canadian border at position 48°17'04" N 123°14'51" W; thence northeasterly to Hein Bank Lighted Bell Buoy; thence southerly to Rosario Strait Traffic Lane Entrance Lighted Horn Buoy "R"; thence to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to New Dungeness Light.

**§ 161.2060 Vancouver Zone.**

The Vancouver Zone comprises that portion of the CVTMS Area north of a line drawn from the tip of Church Point on the Canadian shoreline to position 48°17'04" N 123°14'51" W; thence northeasterly to Hein Bank lighted Bell Buoy; thence northeasterly to Cattle Point.

**§ 161.2062 Separation zones.**

The CVTMS Area contains traffic separation zones bounded by lines connecting the following geographical positions:

(a) Juan de Fuca separation zone:

(1) 48°28'48" N 124°43'36" W
(2) 48°13'24" N 123°56'54" W
(3) 48°13'24" N 123°31'42" W
(4) 48°14'42" N 123°31'48" W
(5) 48°17'48" N 124°00'36" W
(6) 48°29'36" N 124°43'36" W

(b) Port Angeles separation zone:

(1) 48°10'24" N 123°26'30" W
(2) 48°12'18" N 123°27'54" W
(3) 48°12'30" N 123°27'18" W
(4) 48°10'36" N 123°25'48" W

(c) Juan de Fuca western approach separation zone:

(1) 48°30'30" N 124°58'30" W
(2) 48°30'12" N 124°54'00" W
(3) 48°28'54" N 124°54'06" W
(4) 48°28'48" N 124°58'36" W

(d) Juan de Fuca southwestern approach separation zone:

(1) 48°23'12" N 124°55'30" W
(2) 48°25'00" N 124°52'00" W
(3) 48°23'42" N 124°50'08" W
(4) 48°21'24" N 124°52'54" W

(e) Victoria separation zone:

(1) 48°20'42" N 123°25'06" W
(2) 48°16'12" N 123°28'30" W
(3) 48°15'48" N 123°27'06" W
(4) 48°20'30" N 123°24'24" W

**§ 161.2064 Traffic lanes.**

The traffic lanes, which extend to, but do not enter the precautionary areas, are located on both sides of the separation zones and are bounded by lines connecting the following geographical points:

*Western Lanes*

(a) A traffic lane for northwest bound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°15'36" N 123°31'00" W
(2) 48°18'48" N 124°00'12" W
(3) 48°30'42" N 124°43'30" W

(b) A traffic lane for southeast bound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°27'06" N 124°43'48" W
(2) 48°27'06" N 124°41'48" W
(3) 48°12'24" N 123°57'12" W
(4) 48°12'24" N 123°30'12" W

*Southern Lanes*

(c) A traffic lane for northbound traffic is established between the separation zone and line connecting the following geographical positions:

(1) 48°10'54" N 123°25'00" W
(2) 48°13'36" N 123°26'06" W

(d) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°12'24" N 123°30'12" W
(2) 48°10'06" N 123°27'18" W

*Western Approach*

(e) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°31'54" N 124°53'18" W
(2) 48°32'24" N 124°57'48" W

(f) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°27'18" N 124°58'18" W
(2) 48°27'30" N 124°53'48" W

*Southwestern Approach*

(g) A traffic lane for northeastbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°20'36" N 124°51'00" W
(2) 48°23'12" N 124°48'48" W

(h) A traffic lane for southwestbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°13'36" N 124°53'00" W
(2) 48°24'24" N 124°56'42" W

*Northern Lanes*

(i) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°20'54" N 123°26'06" W
(2) 48°15'36" N 123°31'00" W

(j) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°13'36" N 123°26'06" W
(2) 48°20'12" N 123°23'24" W

**§ 161.2066 Precautionary areas.**

(a) *Precautionary area "J."* A precautionary area is bounded as follows: from 48°31'54" N 124°45'24" W; thence southeasterly to 48°30'42" N 124°43'30" W; thence southerly to 48°27'06" N 124°43'48" W; thence westerly to 48°27'06" N 124°45'24" W; thence southwesterly to 48°23'12" N 124°48'48" W; thence northwesterly and northerly by an arc of 7 nautical miles radius, centered at 48°29'12" N 124°43'36" W; thence to the point of the origin.

(b) *Precautionary area "JA."* A precautionary area of radius two miles is centered upon geographical position: 48°14'12" N 123°28'54" W.

(c) *Port Angeles precautionary area.* An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N 123°06'30" W; thence due north to 48°17'10" N 123°06'30" W; thence southwesterly to geographical position 48°10'00" N 123°27'38" W, thence due south to the shorelines, thence along the shoreline to the point of beginning.

Mississippi River

**§ 161.2101 Purpose and applicability.**

Sections 161.2101 and 161.2102 prescribe rules for vessel operation in the Mississippi River to assist in the prevention of collisions and groundings and to protect the navigable waters of the Mississippi River from environmental harm resulting from collisions and groundings.

**§ 161.2102 Vessel operation.**

(a) Mississippi River below Baton Rouge, LA, including South and Southwest Passes:

(1) *Supervision.* The use, administration, and navigation of the waterways to which this paragraph applies is under the supervision of the District Commander, Eighth Coast Guard District.

(2) *Speed; High-water precautions.* When passing another vessel (in motion, anchored, or tied up), a wharf or other structure, work under construction, plant engaged in river and harbor improvement, levees withstanding flood waters, building partially or wholly submerged by high water, or any other structure liable to damage by collision, suction or wave action, vessels must give as much leeway as circumstances permit and reduce their speed sufficiently to preclude causing damages to the vessel or structure being passed. During high river stages, floods, or other emergencies, the District Commander or his designated representative, may prescribe by navigation bulletins or other means the limiting speed in land miles per hour deemed necessary for the public safety for the entire section or any part of the waterway covered by this paragraph, and such limiting speed shall be strictly observed.

(3) *Towing.* Towing in any formation by a vessel with insufficient power to permit ready maneuverability and safe handling is prohibited.

(b) Movement of vessels in vicinity of Algiers Point, New Orleans Harbor:

(1) *Control lights.* When the Mississippi River reaches 8 feet on the Carrollton Gage on a rising stage, and until the gage reads 9 feet on a falling stage, the movement of all tugs with tows and all ships, whether under their own power or in tow, but excluding tugs or towboats without tows or river craft of comparable size and maneuverability operating under their own power, in the vicinity of Algiers Point, will be governed by red and green lights designated and located as follows:

(i) Governor Nicholls Light located on the left descending bank on the wharf shed at the upstream end of Esplanade Avenue Wharf, New Orleans approximately 94.3 miles above Head of Passes; and

(ii) Gretna Light located on the right descending bank on top of the levee at the foot of Ocean Avenue, Gretna, approximately 96.6 miles above Head of Passes.

(2) Governor Nicholls light has lights visible from both upstream and downstream, and Gretna light has lights visible from upstream, all indicating by proper color the direction of traffic around Algiers Point. From downstream Gretna Light always shows green. All lights are visible throughout the entire width of the river and flash once every second. A green light displayed ahead of a vessel (in the direction of travel) indicates that Algiers Point is clear and the vessel may proceed. A red light displayed ahead of a vessel (in the direction of travel) indicates that Algiers Point is not clear and the vessel may not proceed. Absence of light will be considered a danger signal and no attempt may be made to navigate through the restricted area.

Note: To provide advance information to downbound vessels whether the control light at Gretna (Gretna Light) is red or green, a traffic light is located at Westwego on the right descending bank, on the river batture at the end of Avenue B, approximately 101.4 miles above Head of Passes.

(3) Ascending vessels. Ascending vessels may not proceed farther up the river than the Desire Street Wharf (on the left descending bank), mile 93.2 AHP, when a red light is displayed. Vessels waiting for a change of signal must keep clear of descending vessels.

(4) Descending vessels. (i) Descending vessels may not proceed farther down the river than a line connecting the lower end of Julia Street Wharf (on left descending bank), mile 95.2 AHP, with the vertical flagpole at Eastern Associated Terminals (on right descending bank) when a red light is displayed. If the signal remains red, vessels must round to and be headed upstream before they reach that line. Vessels waiting for a change of signal must keep clear of ascending vessels.

(ii) Vessels destined to a wharf above the lower end of Julia Street Wharf shall communicate her destination to the Gretna Traffic Operator by radiotelephone.

(iii) The Master, Pilot, or authorized representative of any vessel scheduled to depart from a wharf between Governor Nicholls Light and Louisiana Avenue, bound downstream around Algiers Point, shall communicate with the Governor Nicholls Light Towerman by telephone or radiotelephone to determine whether the channel at Algiers Point is clear before departure. When the point is clear, vessels must then proceed promptly so that other traffic will not be unnecessarily delayed.

Note: Telephone numbers of both signal towers will be published in navigation bulletins in advance of each operating period. The Traffic Light Operators monitor channel 67 (156.375 MHz).

(5) Minor Changes. The District Commander or his designated representative, is authorized to waive operation or suspension of the lights whenever prospective river stages make it appear that the operation or suspension will be required for only a brief period of time or when river stages fall below the critical stage which is established for operation or suspension by only a few tenths on the Carrollton Gage.

(6) Underpowered vessels. When the Carrollton Gage reaches 12 feet or higher, any vessel which is considered by the Master, Pilot, or person directing the movement as being underpowered or a poor handler may not navigate around Algiers Point without the assistance of a tug or tugs.

(7) Towing. When the Carrollton Gage reaches 12 feet or higher, towing on a hawser in a downstream direction between Julia Street and Desire Street is prohibited except by special permission of the District Commander or his designated representative.

(c) Navigation of South and Southwest Passes. (1) No vessel, except small craft, towboats, and tugs without tows, may enter either South Pass or Southwest Pass from the Gulf until after any descending vessel which has approached within two and one-half (2.5) miles of the outer end of the jetties, has passed to sea.

(2) No vessel having a speed of less than ten miles-per-hour may enter South Pass from the Gulf when the stage of the Mississippi River exceeds 15 feet on the Carrollton Gage at New Orleans. This paragraph does not apply when Southwest pass is closed to navigation. Closing of Southwest Pass will be promulgated by Notice to Mariners.

(3) No vessel, except small craft and tow-boats and tugs without tows, ascending South Pass may pass Frank's Crossing Light until after a descending vessel has passed Depot Point Light.

(4) No vessel, except small craft and towboats and tugs without tows, may enter the channel at the head of South Pass until after an ascending vessel which has reached Frank's Crossing Light, has passed into the river.

(5) When navigating South Pass during periods of darkness no tow may consist of more than one towed vessel

other than small craft, and during daylight hours no tow may consist of more than two towed vessels other than small craft. Tows may be in any formation. When towing on a hawser, the hawser must be as short as practicable to provide full control at all times.

(6) When towing in the Southwest Pass during periods of darkness no tow may consist of more than two towed vessels other than small craft, and during daylight hours no tow may consist of more than three towed vessels other than small craft.

Dated: June 19, 1991.

**J.W. Lockwood,**

*Captain, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

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Part III

# Department of Health and Human Services

## Social Security Administration

**20 CFR Parts 404 and 416**

**Standards for Consultative Examinations and Existing Medical Evidence; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Parts 404 and 416**

**[Regulations Nos. 4 and 16]**

**RIN 0960-AB22**

## Standards for Consultative Examinations and Existing Medical Evidence

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules.

**SUMMARY:** Section 9 of Public Law 98-460 requires that the Secretary issue regulations to establish standards for consultative examinations. These regulations must include standards for determining when to obtain a consultative examination, the type of consultative examination to be purchased, and monitoring procedures for both the purchase process and the consultative examination reports. Every reasonable effort must be made to obtain from the claimant's medical sources the medical evidence necessary to make a determination of disability before evaluating medical evidence obtained from another source on a consultative basis. Section 9 also requires consideration of all evidence available in a claimant's case record and development of a complete medical history covering at least the preceding 12 months in any case where a decision is made that the individual is not under a disability. We have interpreted this provision to refer to the 12 months prior to the date of application, the date the claimant was last insured for disability benefit or period-of-disability purposes, the end of the prescribed period for widow's or widower's benefits based on disability, or attainment of age 22 for child's benefits based on disability, as appropriate. We also understand this provision to mean that a 12-month medical history is generally not required if the disability is alleged to have begun less than 12 months before application. In such cases, we will develop a complete medical history beginning with the alleged onset date.

**EFFECTIVE DATE:** These rules are effective August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone 301-965-1759.

**SUPPLEMENTARY INFORMATION:** We published proposed rules in a Notice of Proposed Rulemaking in the **Federal Register** on April 20, 1987 (52 FR 13014). These final rules respond to comments, reflect and implement the statutory requirements, and clarify our policy on the weight to be given treating source opinions.

### What We Mean by Evidence

We have explained in these final rules, at §§ 404.1512(b) and 416.912(b), what we mean by "evidence" in the disability evaluation process in order to place the rules on evaluating medical opinions in the broader context of all medical evidence in the case record. We have added a paragraph which describes the types of evidence we need from medical sources and the types of evidence we may need from others.

### Evidence From Medical Sources

One of the factors required to establish that an individual is disabled is a medically determinable severe impairment. We must have medical evidence when we determine impairment severity and the individual's residual functional capacity. Objective and complete medical evidence results in quality determinations and prompt decisions. We consider all of the evidence in the individual's record to determine whether the individual is disabled.

We make every reasonable effort to obtain medical evidence from the sources who have treated the individual for the impairment(s) he or she alleges since the alleged disability onset date when the individual is applying for benefits, and during the preceding 12 months when the case of an individual receiving benefits is undergoing review.

The quality of medical examinations has a major effect on the quality of our decision making. We try to make decisions based on evidence from treating sources because of the presumed continuing relationship between the claimant and physician. When the evidence in the individual's case file is insufficient for making a disability decision, a consultative examination is purchased, at Government expense, from the treating source whenever possible. Because basing a decision on evidence from a treating or other medical source is not always possible for various reasons, it is sometimes necessary to purchase a consultative examination from an independent source at Government expense. For example, if the information provided by a treating source or other medical source appears not to be supported by medical findings and the source is unable or unwilling to provide the additional medical evidence we need, we may purchase a consultative examination from another source. We may also obtain a consultative examination from another source when highly technical or specialized evidence which is needed is not available from the treating source or other medical source.

In some instances, we may order a consultative examination from an independent source while awaiting receipt of treating or other medical source evidence, but the report will not be evaluated until that evidence is received or every reasonable effort has been made to obtain it.

### Program Integrity

Since the enactment of the Medicare/Medicaid anti-fraud and abuse amendments of 1977, an escalation in the prosecution of medical service providers for fraud and abuses in those programs has raised the issue of the propriety of the Social Security Administration (SSA) using these and other offenders in the disability programs administered under titles II and XVI of the Social Security Act (the Act). We are, therefore, providing rules in §§ 404.1503a and 416.903a barring our use of any individual or entity who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or by any other Federal or federally-assisted program or whose license is currently revoked or suspended by any State licensing authority pursuant to adequate due process procedures, except to provide existing medical evidence. The final rules reflect a change from the proposed rules to conform our policy to the policies of other agencies responsible for health care delivery programs. We believe it would be unreasonable and confusing to medical providers for us to administer a significantly different policy than these other agencies. For clarity, we are defining an individual or entity as a medical or psychological consultant, consultative examination provider, or diagnostic test facility.

### Consultative Examinations

Consultative examinations are medical examinations we purchase from physicians, including pediatricians when appropriate, and other qualified health professionals outside the agency.

If an individual's treating or other medical sources cannot provide us with sufficient medical evidence about his or her impairment(s) to enable us to determine whether the individual is disabled or blind, we may ask the individual to have one or more physical

or mental examinations or tests. We will pay for those examinations that we arrange in accordance with our rules at §§ 404.1624 and 416.1024 on payment for medical and other purchased services. When we arrange an examination or test, we will give the individual reasonable notice of the date, time, and place that the examination or test will be given, indicate the type of examination or test that will be given, and provide the name of the person or facility who will do it. We will also give the examiner any necessary background information about the individual's condition unless the examiner already has the background information because he or she is a treating source.

If an individual is applying for benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test that we arrange to obtain information to determine disability or blindness, we may find that the individual is not disabled or blind. If the individual is already receiving benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test that we have arranged, we may determine that the disability or blindness has ceased.

**Standards for Consultative Examinations**

Consultative examinations may be obtained to secure additional information necessary to make a disability determination or to resolve conflicting information. Evidence obtained through a consultative examination is considered with all other medical and nonmedical evidence submitted in connection with a disability claim. Sections 404.1519m and 416.919m have been revised to state that a State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance that it may entail significant risk.

Until enactment of section 9 of Public Law 98–460, there was no statutory requirement for regulatory standards specifying particular cases in which consultative examinations would be purchased, identifying the types of consultative examinations to be purchased, or requiring any standard procedures to be followed in establishing and monitoring purchase policies. Because consultative examinations are purchased at government expense, we have had guidelines that cover the standards to be used in purchasing and monitoring such examinations. For some time, we have had in place in our operating manuals these guidelines for managing every aspect of the consultative examination process from deciding when to purchase an examination, to providing guidance to the person performing the consultative examination, to monitoring the actual consultative examination delivery process and the reports which it produces. Congress, in passing section 9 of Public Law 98–460, expressed satisfaction over our success in better management of the consultative examination process, but stated that our standards should appear in regulations. See H. Rep. No. 98–618, 98th Cong., 2d Sess. 19–20 (1984). These regulations are being issued to comply with the law.

In addition to incorporating our existing operating procedures into this regulation, we are adding further provisions in three areas. First, we have identified certain time periods that we believe can serve as a frame of reference for scheduling a consultative examination. These minimum scheduling times are intended to emphasize our intentions that sufficient time be made available for thoroughly examining the claimant. They are meant to ensure sufficient time for a full consultative examination including development of the claimant's case history. They are not meant as inflexible rules to be applied mechanically or to impede appropriate judgment on the part of the State and professional individuals. Second, standards are included to ensure that laboratory fees paid to consultative examination providers for services are reasonable and do not permit excessive charges by the source. Third, we emphasize that State rules must be followed regarding minimum qualification levels for physicians' and psychologists' assistants.

The minimum scheduling times for consultative examinations were developed by a panel of regional office and State agency physicians and administrators that was convened to assist us in the preparation of these regulations. Many State agencies already had such standards, including some based on the duration of the examination and others on the numbers of patients who can be scheduled for consultative examinations per hour. These final rules establish national norms.

We have deleted the last two sentences of §§ 404.1519k(a) and 416.919k(a) that were included in the notice of proposed rulemaking. Those sentences dealt with the State determining the rate of payment for the purchase of medical examinations, laboratory tests, and other services and were an overstatement of our policy on the State's authority to set the fees for such services.

The final rules on consultative examinations fall under the categories mandated by law. Those categories are:

(1) Standards to be used by State and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations.

(2) Standards for the type of referral to be made.

(3) Procedures to monitor the referral process used.

(4) Procedures to monitor the product of health professionals to whom cases are referred.

These standards are being included in subpart P of part 404 and subpart I of part 416. We are adding new §§ 404.1519 through 404.1519t and new §§ 416.919 through 416.919t. We are also updating the Table of Contents for subpart P and subpart I.

**Definitions**

We are revising §§ 404.1502 and 416.902 to define what we mean by *medical source, treating source,* and *source of record.*

**Evidence of Impairment**

We have reorganized and expanded §§ 404.1512 and 416.912 to clarify our existing regulations, to provide greater detail about the rules on development of existing evidence, and to refine and consolidate some of the language in §§ 404.1519 and 416.919, 404.1519a and 416.919a, and 404.1519b and 416.919b. The final rule defines what we mean by "evidence" and clearly delineates the responsibilities of the individual and SSA. We explain these and other changes below.

**The 12-Month Medical History**

We are making changes in paragraph (b) of §§ 404.1512 and 416.912, and §§ 404.1593 and 416.993, to indicate that we will develop a complete medical history covering at least the preceding 12 months in any case in which an unfavorable determination is made, unless the disability is alleged to have begun less than 12 months before application. See S. Rep. No. 98–466, 98th Cong., 2d Sess., 26 (1984). In addition, we have made changes to indicate that, if applicable, we will develop a complete medical history for at least the 12-month period prior to the month the individual was last insured for disability benefits, the month ending the 7-year period to establish the individual's disability if the individual filed an application for widow's or widower's benefits, or the month of attainment of

age 22 if the individual filed an application for child's insurance benefits based on disability. We are also stating that we will make every reasonable effort to obtain from the individual's treating and other medical sources the evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. "Every reasonable effort" is defined to mean an initial request and, at any point between 10 and 20 calendar days after the initial request, if the evidence has not been received, one followup request to the medical source for the medical evidence. The source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates a longer period is advisable in a particular case, before we evaluate the evidence that we may obtain on a consultative basis. In some instances, we may order a consultative examination while awaiting receipt of treating or other medical source evidence.

In addition, we are amending paragraph (a) of §§ 404.1520 and 416.920 to state more clearly that we consider all evidence in the individual's case record when we make a determination. We are also revising §§ 404.1593 and 416.993 to recognize that development of medical evidence in continuing disability review cases will be guided by the special requirements of the medical improvement review standard and to reaffirm that consultative examinations are purchased with only one purpose, to provide information necessary to reach a decision in a case.

**Medical Assessment Requirement**

We are also revising §§ 404.1513 (b)(6) and (c), 404.1545(a) and 404.1546, as well as §§ 416.913(b)(6) and (c), 416.945(a) and 416.946 to delete references to medical assessments and to refer instead to medical source statements about what a person can still do despite his or her impairment(s). These revisions accomplish two things: They remove all reference to the term "medical assessment," which was not clearly defined and was thus open to various interpretations; and they indicate that we will consider all of the medical and other evidence in determining whether a person is disabled, including statements from medical sources about what a person can still do despite an impairment, and that medical source statements alone are not determinative of whether or not the person is disabled.

We believe these are important changes. There has been confusion among adjudicators as to what constitutes a "medical assessment." This has resulted in special requests being made to elicit information which was already at hand but not labeled "medical assessment." We have also revised §§ 404.1513(b)(6) and 416.913(b)(6) to make clear that we will request medical source statements from treating sources, although the absence of a medical source's statement in a report of existing medical evidence does not make the report incomplete. Also, §§ 404.1519n and 416.919n ensure that although medical source statements should ordinarily be requested as part of the consultative examination process, the absence of a medical source's statement in a consultative examination report does not make the report incomplete.

**Evaluating Medical Opinions**

In the preamble to the Notice of Proposed Rulemaking, we noted that the Senate Finance Committee had indicated in its report on Public Law 98–460 (S. Rep. No. 98–466, 98th Cong., 2d Sess., 26 (1984)), that it did not intend to alter in any way the relative weight that the Secretary places on reports received from treating physicians and from physicians who perform consultative examinations. We also noted that judicial decisions in several circuits pointed to a need for a clear policy statement that would encourage uniformity of adjudication and provide the public and the courts with a definitive explanation of our policy on weighing treating source opinions. Accordingly, we proposed to replace existing regulations §§ 404.1527 and 416.927 with longer and more detailed provisions that would prescribe rules stating how we would consider and weigh medical opinions.

Some public comments concerning the way we evaluate medical opinions were critical. The comments demonstrated to us that our proposed regulation was not as clear and comprehensive as we had hoped and that it could be misinterpreted. We have, therefore, revised and expanded §§ 404.1527 and 416.927 to state our policy more clearly and in more detail and to respond to the public's concerns.

Although the circuit courts vary somewhat in their formulation of the rule on how treating source evidence is to be considered, the majority of the circuit courts generally agree on two basic principles. First, they agree that treating source evidence tends to have a special intrinsic value by virtue of the treating source's relationship with the claimant. Second, they agree that if the Secretary decides to reject such an opinion, he should provide the claimant with good reasons for doing so. We have been guided by these principles in our development of the final rule.

We were guided in the development of these final rules by the general principles articulated by the various circuit courts. None of the circuit courts of appeals has held that its treating physician rule is required by the Act or the Constitution. Rather, the courts of appeals have articulated their treating physician precedent in the absence of a definitive regulation by the Secretary and in the context of reviewing individual decisions by the Secretary under section 205(g) of the Act to determine whether those individual decisions, given the facts of the particular case, were supported by "substantial evidence." Indeed, the Second Circuit in the *Schisler* case recently expressly invited the Secretary to use the "customary administrative process" to promulgate a treating physician policy. The Secretary has the authority and responsibility under sections 205(a), 223(d)(5) and 1102 of the Act to prescribe regulations for determining the amount and kind of evidence an individual must furnish in order to establish that he or she is under a disability. In these final rules we are exercising that authority to prescribe the standards that we will use to evaluate treating source opinions when those opinions are furnished as evidence in connection with a claim for disability benefits. The Secretary will be applying these final rules as the appropriate legal standard for evaluating treating physician opinion evidence in claims before the Agency.

Under the Act, a claimant is required to prove to us that he or she is disabled by providing medical and other evidence of disability. We consider medical opinions, including treating source opinions, to be evidence that must be evaluated together with all of the other evidence in a person's case record. Sometimes, medical opinions may be entitled to so much weight that they control the issues they address; other times, opinions may be entitled to less weight.

The final rule addresses the problems of weighing opinion evidence in several ways. It recognizes that, because opinions always have a subjective component, because the effects of medical conditions on individuals vary so widely, and because no two cases are ever exactly alike, it is not possible to create rules that prescribe the weight to be given to each piece of evidence that we may take into consideration in every case. It also recognizes that the weighing of any evidence, including opinions, is a process of comparing the

intrinsic value, persuasiveness, and internal consistency of each piece of evidence and then evaluating all of the evidence together to determine which findings of fact are best supported by all of the evidence. The final rule places medical opinions in the context of the entire case record by first stating general principles of weighing evidence and then the specific rules for weighing opinion evidence. The final regulation provides more detail than the notice of proposed rulemaking on how we will weigh all types of evidence, and contains some substantive changes in our policy made in response to public comment. We believe the level of detail in these final rules is necessary in order to explain our policy fully and to provide sufficient guidance to our adjudicators.

The regulation also recognizes that we may receive medical opinions from three kinds of medical sources: treating sources, other examining sources who are not treating sources (for example, consulting physicians and psychologists), and nonexamining sources. It describes the factors we will consider when we weigh each kind of opinion. It also provides special rules for weighing treating source opinions, and differentiates between the standards for weighing treating source opinions and opinions from other sources. We have included a discussion of evaluation of nontreating source opinions in these final rules because it was clear to us that we could not fully describe the rules to be used in weighing treating source opinions without also describing how those opinions were to be evaluated in relation to opinions from other sources.

The following discussion describes the structure of §§ 404.1527 and 416.927 in detail and why we revised the regulation as we did.

The final regulation contains six paragraphs that do not correspond directly to the paragraphs of the regulation proposed in the notice of proposed rulemaking. Instead, we have reorganized and rewritten the provisions that were originally proposed.

1. Paragraph (a) of the final rule is a new provision that defines the kinds of medical evidence we may consider to be medical opinions.

2. Paragraph (b) states our policy that we always consider relevant medical opinion evidence together with other relevant evidence when we make our determinations and decisions.

3. Paragraph (c) describes generally how we consider evidence, including opinions, in making disability determinations. It also explains the weighing of evidence and describes the steps we will take before we make our determinations and decisions.

The evaluation of evidence is a complex process that requires careful analysis of the value of each piece of evidence and the interrelationship of and consistency among the various pieces of evidence. When the evidence is consistent and sufficient for us to decide a case, decision making is relatively straightforward since we can simply make our findings consistent with the evidence as a whole. However, if there are any inconsistencies in the evidence, including any individual reports that may be internally inconsistent (for example, when a report provides detailed medical findings that suggest greater or lesser severity of impairment than is expressed in an opinion at the end of the report), we weigh all of the evidence to determine what findings are best supported and whether there is sufficient evidence for us to make a final determination or decision.

Regardless of whether the evidence in the case record is consistent, if there is insufficient evidence for us to decide the case, we will try to remedy any evidentiary deficiencies, as provided elsewhere in these regulations. If we are successful, we will have a case record that is either wholly consistent and sufficient to decide the case, or which retains inconsistencies but contains sufficient evidence for us to resolve the inconsistencies. If we cannot get the evidence we need, we will have no alternative but to make a determination or decision by weighing all of the evidence we have and making judgments about what findings can be best supported.

4. Paragraph (d) contains the principal provisions of the regulation section and is intended to replace paragraphs (b) through (d) of the regulation section proposed in the notice of proposed rulemaking. It recognizes that medical opinions are particularly difficult to assess since they always reflect judgments or beliefs of the person offering the opinion that we may not be able to verify or that we may find questionable based on our understanding of all of the evidence. We cannot decide a case solely in reliance on a medical opinion when there is not some reasonable support for the opinion, nor can we find an opinion to be controlling simply by virtue of the fact that it may come from a treating source if there is other substantial evidence which casts doubt on the opinion.

We recognize that medical conditions affect individuals in widely different ways and that medical opinions—especially those from treating sources—can provide evidence of the nature and severity of an individual's impairment(s) that cannot be obtained by any other means. Accordingly, paragraph (d) reaffirms that we will never ignore any medical opinion in the case record. Then, it describes the factors we consider when we determine the amount of deference to give to a medical source's opinion, with particular attention to a treating source's opinion.

In a trial-type or adversarial situation, the facts or grounds on which an opinion is based can be brought out by cross-examination. Such cross-examination can strengthen or weaken the probity of the medical opinion. The Social Security disability programs provide for the adjudication of disability claims in a nonadversarial context without the cross-examination safeguard. We believe that the use of the factors specified in paragraph (d) is a reasonable substitute for the scrutiny that any opinion would be subjected to if it were placed before a court in an adversarial context.

When we cannot give controlling weight to a treating source's opinion about the nature and severity of a claimant's impairment(s), we consider all the following factors when we decide how much weight to give to the opinion.

a. *The examining relationship*—A medical opinion of a source who has examined the individual will generally be given more weight than a medical opinion of a nonexamining source.

b. *The treatment relationship*—We give treating source medical opinions special deference because treating sources usually have the most knowledge about their patients' conditions. When we weigh a treating source's medical opinion, we consider several factors that indicate the extent of this knowledge. Considering these factors allows us to determine whether the treating source is in fact an individual to whom we should give deference and the amount of deference to give to the source's medical opinion. We will consider the length, frequency, nature, and extent of the relationship between the treating source and the claimant. Generally, the longer a treating source has known an individual, the greater the number of times the source has seen the individual for treatment, and the greater the extent of examinations and testing the source has provided or ordered, the more weight we will give to the source's opinion on any medical issue.

c. *Supportability*—The more relevant the supporting evidence of an opinion and the better an explanation a medical

source provides, the more weight we will give that opinion.

d. *Consistency*—The more consistent a medical opinion is with the record as a whole, the more weight we will give that opinion.

e. *Specialization*—We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist in that area.

f. *Other factors*—We have included a provision to cover situations that may arise in rare cases that may not be covered by the foregoing provisions. For example, information that a particular physician or psychologist has been submitting identical medical reports for different individuals would clearly affect the weight we would give to any opinions expressed in those reports.

Even though we will consider all of the foregoing factors each time we weigh an opinion, not every factor will apply in every case. Also, certain factors (for example, treatment relationship) will sometimes take precedence over other factors; at other times, certain combinations of factors will result in a finding that one opinion is entitled to more weight than another, or that a single opinion is entitled to great weight while another might not be. As we have explained above, there are simply too many variables to permit a formulaic description of how we will apply the factors in every case, but we believe that the factors in paragraph (d) represent a fair, logical, and comprehensive description of the considerations we should take into account when weighing medical opinions.

Paragraph (d)(2) also states special rules for evaluating medical opinions from treating sources. It provides that we must give controlling weight to any treating source medical opinion on the issues of the nature and severity of the impairment when the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record. The final rule was drafted to clarify language in the notice of proposed rulemaking, §§ 404.1527(b) and 416.927(b), which contained the provision most criticized in the public comments. The provision recognizes the deference to which a treating source's medical opinion should be entitled. It does not permit us to substitute our own judgment for the opinion of a treating source on the issues of the nature and severity of an impairment when the treating source has offered a medical opinion that is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence.

We substituted the word "controlling" for the word "conclusive" in those situations where treating source opinions are such that they should be accorded great deference. We believe the word "controlling" more clearly reflects the process we use, but do not believe any substantive difference in the standard results from the substitution of "controlling" for "conclusive." We changed the term "fully supported" to "well-supported" because we agreed with commenters who pointed out that "fully supported" was unclear and that, more important, it was an impractically high standard which, even if it were attainable, would essentially make any opinion superfluous. We believe that the new term, "well-supported," is more practicable and more reasonable; it should make clear that we will adopt opinions that are well-supported by medically acceptable clinical and laboratory diagnostic techniques unless they are inconsistent with substantial evidence in the record.

Whether an opinion is well-supported will depend on the facts of each case; however, as we explain below, when a treating source's opinion is not accorded controlling weight, good reasons for such a decision are required in the notice of determination or decision.

We also deleted the word "medical" from the phrase "substantial medical evidence" in order to avoid the possibility of an improper result being reached in some cases. Although we would expect it to be an extremely rare occurrence, it is possible that a treating source's opinion about the nature or severity of a claimant's impairment(s), even one that is well-supported by medically acceptable clinical and laboratory findings, may nevertheless be contradicted, and even outweighed, by substantial nonmedical evidence. For example, an opinion from a treating source about what a claimant can still do which would seem to be well-supported by the objective findings would not be entitled to controlling weight if there was other substantial evidence that the claimant engaged in activities that were inconsistent with the opinion.

In addition to the rule requiring us to give controlling weight to certain treating source opinions, we have provided two rules in paragraph (d)(2) for weighing treating source opinions that are not entitled to controlling weight, in recognition of the special kind of knowledge about the nature and severity of their patients' impairments that only treating sources can have. These rules replace the provisions that were in the proposed regulation's paragraph (d), including the term "some extra weight" which was also identified in the public comments as a source of confusion. All things being equal, when a treating source has seen a claimant long enough to have obtained a detailed longitudinal picture of the claimant's impairment(s), we will always give greater weight to the treating source's opinion than to the opinions of nontreating sources even if the other opinions are also reasonable or even if the treating source's opinion is inconsistent with other substantial evidence of record. The rule also provides that, even if the treating source's opinion is not such that we can give it controlling weight, we will still give the opinion more weight than we would have given it if it came from a nontreating source.

We combined the rule on according controlling weight to some treating source medical opinions with the other special rules addressing treating source medical opinions to emphasize that we will still carefully evaluate such opinions, and that we may still accord them special deference or determine that they are entitled to great weight when we do not give them controlling weight. Subsequent provisions in paragraph (d)(2) provide that, as long as the treating source is someone entitled to special deference, and all other factors are equal, we will always give more weight to treating source medical opinions than to opinions from other sources.

Finally, paragraph (d) provides that, when we do not give a treating source's medical opinion controlling weight, we will always provide good reasons why we have not done so in our notices of determination and decision.

Paragraph (d) provides that many of the factors we use for weighing opinions from treating sources are also used in weighing opinions from sources who have examined claimants but who have no treatment relationship (such as consulting physicians and psychologists or physicians or psychologists who may have performed individual consultations during the course of a hospitalization) and from nonexamining medical sources. Thus, the weight to which the opinion of a nontreating source will be entitled depends on such factors as the consistency of the opinion with other evidence, the qualifications of the source, and the degree to which the source offers supporting explanations for the opinion. Even though we may ultimately find the opinion of a

nontreating medical source entitled to greater weight than that of a treating source, the opinions of nontreating sources are not entitled to the special deference that we give to treating source opinions.

Essentially, once we have determined that an opinion is from a treating source, it is entitled to special deference. The final rules provide that treating source opinions are generally entitled to greater weight than opinions from nontreating sources unless there are clear and specific reasons why they are outweighed.

5. Paragraph (e) addresses the consideration of opinions on issues reserved to the Secretary. Except for editorial changes, paragraph (e)(1) is intended to be identical in meaning to the rule that was in the existing regulations §§ 404.1527 and 416.927. Paragraph (e)(2) replaces the paragraph (e) of the notice of proposed rulemaking, which was another source of serious concern and misunderstanding in the public comments.

Medical sources often offer opinions about whether their patients are "disabled" or "unable to work." Sometimes, medical sources offer opinions about whether their patients have impairments that meet or equal the requirements for an impairment listed in appendix 1 to subpart P of part 404. Medical sources may also offer opinions about a claimant's "residual functional capacity" under §§ 404.1545 and 416.945 (as distinct from the "statements about what you can still do" described in §§ 404.1513 and 416.913), or about their patient's ability to perform past relevant work or any other type of work considering residual functional capacity, age, education, and work experience.

The new paragraph (e) provides that we will not disregard these opinions, even though they may generally be beyond the expertise of most medical sources. In fact, if a treating source provides an opinion on a nonmedical issue and the basis for the opinion is not clear from the evidence in the case record, we will make every reasonable effort to recontact the source to obtain an explanation of the medical basis for that opinion. The intent of the paragraph, however, is to reiterate the principle previously stated in §§ 404.1527 and 416.927 that determinations on these issues, as described in those sections, are strictly the responsibility of the Secretary and that opinions which address these issues can only be given weight proportionate to the extent to which we can find that they are supported by the remainder of the record. The Act requires such determinations to be made by a State agency or the Secretary. To give a treating source's opinion on such an issue controlling weight would, in actuality, confer upon the treating source the authority to make the determination, and would not, in our view, be consistent with the statute. This was what we intended with the language in proposed paragraph (e). We did not mean to require medical sources to use proper terminology, as some commenters inferred. However, we did mean to reserve the ultimate determination of disability to the Secretary.

6. Paragraph (f) is a new provision that addresses evidence from nonexamining physicians and psychologists. We use physicians and psychologists in several capacities. At the State agency, physicians and psychologists are members of the teams that make disability determinations. We also employ physicians and psychologists to perform quality reviews and to provide expert opinions to State agencies, disability hearing officers, administrative law judges, and the Appeals Council. Administrative law judges may also call upon medical advisors to provide expert testimony at hearings. Even though the provisions of the introductory paragraph of paragraph (f) will normally apply to such physicians and psychologists, they are applicable to opinions received from any nonexamining source, including the rare nonexamining medical source opinion submitted by a claimant.

Paragraphs (f)(1) and (f)(2) are new provisions which clarify the complex role of the State agency medical and psychological consultant. Paragraph (f)(1) explains that when State agency medical or psychological consultants make findings of fact about medical issues in their decision making capacities, the findings are not opinions which are to be weighed against opinions in the case record. Rather, they are findings based on the pertinent medical and other evidence, including medical opinions. When State agency medical or psychological consultants assess medical opinions in the case record, they apply the principles set forth in §§ 404.1527 and 416.927.

At the hearing level, administrative law judges consider the issues before them *de novo*. Therefore, when administrative law judges consider issues of disability, they are not bound by any findings made at the State agency in connection with the initial and reconsidered determinations. However, State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, it has been our longstanding policy that administrative law judges will consider the findings of State agency medical and psychological consultants with regard to the nature and severity of a claimant's impairment as opinions of nonexamining physicians and psychologists. We have incorporated this policy into the regulations in §§ 404.1512(b)(6) and 416.912(b)(6) and in §§ 404.1527(f)(2) and 416.927(f)(2).

Administrative law judges will not give the opinions of State agency medical or psychological consultants any special weight as such; they will apply the principles of §§ 404.1527 (a) through (e) and 416.927 (a) through (e) when they weigh such opinions, always considering that the opinions come from sources who have never examined the individual whose case is being decided. Paragraph (f)(3) provides that the same policy applies to the Appeals Council when the Appeals Council issues a decision.

**Public Comments**

We published proposed rules to establish standards for consultative examinations in a notice of proposed rulemaking in the **Federal Register** on April 20, 1987 (52 FR 13014). Interested persons, organizations, Government agencies, and other groups were given 60 days to comment. The comment period closed on June 19, 1987.

We received comments from individuals, organizations, and Government agencies, both State and Federal, whose responsibilities and interests require them to have some expertise in the evaluation of medical evidence used in making disability determinations under titles II and XVI of the Act. We received no comments from disabled persons individually, but we did receive them from six legal services organizations that represent the interests of disabled individuals. We also received comments from medical associations, physicians, and other medical professionals.

We have carefully considered all of the comments and have adopted many of the recommendations. These changes are identified in the following discussion of issues which were raised in the comments.

Many of the written comments, by necessity, had to be condensed, summarized or paraphased. In doing this, we believe we have expressed everyone's views adequately and responded to the issues raised.

Some of the comments raised details about how the regulations would be implemented. We believe these

comments are not substantive public comments that must be addressed in the regulations.

Many of the explanations and discussions of issues as published in the notice of rulemaking have been expanded and clarified. We believe the result is an improvement over the rules as published in the notice of proposed rulemaking which will enhance the uniformity and equity with which the rules are applied.

We have refined and consolidated some of the language previously proposed in §§ 404.1519 and 416.919, 404.1519a and 416.919a and 404.1519b and 416.919b and moved it into §§ 404.1512 and 416.912. We believe this is appropriate as it makes clearer the process of obtaining existing medical evidence from medical sources, including recontacting the medical source, before evaluating a consultative examination. We revised §§ 404.1512 and 416.912 to clarify that the 12-month medical history means 12 months prior to the application, the date the claimant was last insured for disability benefit or period of disability purposes, the end of the prescribed period for widow's or widower's benefits based on disability, or attainment of age 22 for child's benefits based on disability, as appropriate.

We have reorganized the sections on consultative examinations issues into what we believe is a more logical order when read in the context of current regulations.

Although we did not include §§ 404.1517 and 416.917 of the existing regulations in the notice of proposed rulemaking because we did not initially recognize the need for changes in those sections, we later realized that they should have been revised to avoid redundancy. We have therefore revised the last sentence of §§ 404.1517(a) and 416.917(a) by inserting a period after the words "about your condition." In addition, we have deleted §§ 404.1517(b) and 416.917(b) since situations requiring a consultative examination are now described in §§ 404.1519(a) and 416.919(a). Therefore, §§ 404.1517(a) and 416.917(a) have been redesignated to §§ 404.1517 and 416.917. We have deleted §§ 404.1519e and 416.919e and §§ 404.1519f and 416.919f as set out in the Notice of Proposed Rulemaking since the procedures for development of evidence and obtaining consultative examinations followed at the initial level are also applicable at the reconsideration and hearings level of review; we have added a statement to this effect in §§ 404.1519 and 416.919.

We reorganized the language previously proposed in §§ 404.1519s and 416.919s and §§ 404.1519t and 416.919t as follows:

1. The content of the first paragraph of §§ 404.1519s and 416.919s was moved to §§ 404.1519t(a) and 416.919t(a).

2. The language in §§ 404.1519t and 416.919t, with the exception of the language in §§ 404.1519t(9)(d) and 416.919t(9)(d), is now located in §§ 404.1519s and 416.919s.

We clarified § 416.920 to indicate that it does not apply to children under title XVI.

In proposing these regulations, we had certain objectives in mind in addition to implementing section 9 of Public Law 98–460:

- To ensure that accurate disability determinations are made as early in the process as possible;
- To improve the uniformity of disability determinations;
- To improve the management of the disability programs both at the State and Federal levels; and,
- To preserve the basic Federal/State relationship.

These objectives also guided us as we evaluated the comments received from the public.

For ease of comprehension, we have organized comments according to the issues raised. The issues and our responses are presented in the order in which the regulations are now organized and not in the order in which the issues appeared in the notice of proposed rulemaking, except for the sections which we have deleted from the final regulations. The reference to sections in the headings regarding the comments and in the comments refer to sections as numbered in the notice of proposed rulemaking.

*Sections 404.1502/416.902 General Definitions and Terms for This Subpart.*

*Comment:* Several commenters believed that the definition of "treating source" was too restrictive and should include physicians who have treated the claimant in the past as well as those currently treating the claimant. One commenter believed that "treating source" should be defined as "the one who provides medical treatment for alleged impairment(s)."

*Response:* We have modified the language in the definition of "treating source" to include those physicians who had treated the claimant on an ongoing basis in the past. We did not limit the definition to "one who provides treatment for the alleged impairment," since pertinent evidence may be available in the records of a treating source who has or had an ongoing treatment relationship with the claimant for a condition other than the alleged impairment.

*Comment:* Some commenters expressed concern about the distinction between "treating source" and "source of record." The commenters suggested clarification or deletion of the phrase "ongoing treatment relationship." One commenter suggested cross-referring this section to §§ 404.1513 and 416.913 to clearly define the term "your own physician," to avoid controversy over evidence from chiropractors, naturopaths, and other practitioners not licensed to practice medicine and surgery.

*Response:* The distinction between "treating source" and "source of record" has been made to differentiate a source who has examined the claimant but did not have an ongoing relationship with the claimant from one who has such a relationship. Additionally, we have stated what we mean by "ongoing treatment relationship." We have cross-referred §§ 404.1502 and 416.902 to §§ 404.1513 and 416.913 to distinguish acceptable medical sources from other sources.

*Sections 404.1503a/416.903a Program Integrity*

*Comment:* Some commenters stated there was not enough detail with regard to the issue of revocation and suspension of license by the State and asked, when revocation or suspension occurs, whether the individual involved is permanently barred from participation in the program or barred only for the duration of the revocation or suspension. One commenter wanted to know SSA's position regarding use of evidence from an individual whose license to practice is restored after (1) passage of penalty time or (2) after investigation.

*Response:* We will not use in our program except to provide existing medical evidence, any medical or psychological consultant, consultative examination provider, or diagnostic test facility currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or federally-assisted program. The regulations have been revised to reflect this policy. Participation in the Social Security programs is permitted after revocation or suspension, once the license to practice has been restored by the State which revoked or suspended it and the bar from participation in the Medicare or Medicaid programs is removed.

We believe a physician's/provider's professional conduct, reputation, and dealings within the community and with

all Government agencies must be such as to avoid any unfavorable reflection upon the Government and erosion of public confidence in the administration of the program.

*Comment:* One commenter suggested we clarify whether the filing of an appeal on a bar from participation in the Medicare or Medicaid program by physicians would result in a suspension of the debarment by SSA.

*Response:* The filing of an appeal would not result in a suspension of the debarment by SSA.

*Comment:* Several commenters indicated the need for SSA to maintain a listing of individuals and entities found guilty of professional misconduct in order to keep the State agencies informed.

*Response:* We agree and are looking into the possibility of obtaining such information through the use of a data bank service which maintains data on a wide variety of professional disciplinary actions taken against individuals and entities in the country.

*Comment:* Several commenters suggested that we list additional reasons for exclusions since congressional hearings and the General Accounting Office reports on the consultative examination issue, particularly with regard to "key" or "volume providers," suggested the need to list further abuses in this section to avoid future problems.

*Response:* We have not adopted the suggestion that we need to list additional reasons for exclusion. We believe the regulations cover a broad base of reasons for not using sanctioned physicians. The list of sanctioned physicians SSA receives from the Office of the Inspector General, which we regularly forward to the States, together with information the State agencies receive and maintain through their monitoring systems on volume providers and other medical sources are designed to ensure the integrity of the program.

*Comment:* Two commenters believed that prohibitions against "using" physicians in the program and the type of participation that is precluded needed additional clarification. For example, the commenters asked if we would apply this regulation in situations in which the sanctioned individual or entity was involved in our program prior to the legal sanction, and whether we would apply the rule to laboratories used by treating physicians. The commenters believed the regulation could preclude use of a report from such a source in his or her role as a treating source or source of record.

*Response:* We believe that evidence submitted by sanctioned physicians who are medical sources cannot be summarily disregarded in reviewing disability claims. Similarly, if we have knowledge that the treating source has used the services of a laboratory that has been sanctioned, such evidence will also be considered. Section 223(d)(5)(B) of the Act states, in part, that "in making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record."

*Comment:* Several commenters questioned whether we would accept existing medical evidence from sanctioned individuals and entities, and, if so, what the probative value of such evidence would be. Another commenter wanted it specified that the State agencies will not base their disability determinations on any evidence presented by attending physicians who have been sanctioned by the Office of the Inspector General for Medicare or Medicaid program violations.

*Response:* As we indicated earlier, evidence submitted by sanctioned physicians who are medical sources cannot be summarily disregarded because this would be unfair to the claimant. However, if the examiner has reason to doubt the reliability of a report from a sanctioned physician, then the evidence may have less probative value. Similarly, the particular action which has caused a physician to be excluded from the program will be considered in evaluating medical evidence of record submitted by that physician.

*Comment:* With regard to the concept of using the treating physician as the preferred source for consultative examinations, one commenter wanted to know if such disciplinary action would bar consideration of those physicians. Another commenter wanted it clearly specified that the State agencies will not purchase consultative examinations from attending physicians who have been sanctioned by the Office of the Inspector General for Medicare or Medicaid program violations.

*Response:* We will not use a treating source to perform a consultative examination if we have knowledge that the treating source is currently under sanction by the Office of the Inspector General for Medicare or Medicaid program violations or by the State licensing authority.

*Sections 404.1512/416.912 Responsibility for Evidence of Your Impairment*

*Comment:* One commenter stated that it would be advantageous to ensure that all claimants fulfill their responsibility to submit evidence of disability. Two commenters indicated that a step-by-step procedure should be implemented for capable claimants to follow to secure medical evidence in support of their claims. Three commenters believed that requiring the claimant to contact medical sources to help obtain medical reports may result in unfair denials. Several commenters stated that severely disabled individuals cannot be expected to assume responsibility to get evidence, and that SSA must assume responsibility in those cases.

*Response:* We have made clear in §§ 404.1512 and 416.912 of these final regulations the claimant's responsibility to submit evidence of disability and SSA's responsibility to assist the claimant in obtaining evidence of the claimant's impairment. We believe these provisions prevent unfair denials to claimants who must assist us in contacting medical sources to help obtain the medical reports. Additionally, SSA assists those claimants who may be physically or mentally unable to provide evidence.

*Comment:* One commenter believed that the regulations should honor the statutory directive of developing a complete 12-month history in all cases regardless of the alleged onset date. Other commenters also believed that in cases involving mental impairments the claimant's statement or recall of disability onset should not necessarily be the sole determining factor in developing the preceding 12 months' evidence.

*Response:* We do not believe that the statute requires 12 months' development in every case. We have revised the regulations to indicate that if the alleged onset date is less than 12 months before the application filing date, we will develop a complete medical history beginning with the month of alleged onset date. In mental impairment cases, as in any other case, evidence can be requested with respect to periods before the alleged onset date. The criteria of this provision are meant to be minimum standards. Judgment and selectivity should be used based on the facts of a particular case.

*Comment:* Several commenters saw no purpose in rigid timeframes for followup for obtaining existing medical evidence. Some stated that the total 30-day timeframe is unreasonable and should be longer. Others stated that the timeframe should be less than 30 days. Some commenters stated that additional efforts should be made in securing existing medical evidence such as a second followup by telephone, or that a carbon copy of the followup should be sent to the claimant so the claimant can

request the source to respond promptly. One commenter suggested waiting 28 days after the initial request for existing medical evidence before purchasing a consultative examination, except when a source is known to be uncooperative in providing such medical evidence. Several commenters stated that a consultative examination should not be ordered while awaiting existing medical evidence.

*Response:* We have revised the language for "every reasonable effort," the effort which we must expend to help a claimant get medical evidence from his or her own medical source, to permit a period of 30 calendar days between the date of the initial request for existing medical evidence and the response to the followup. Within this 30-day period, the followup can be made at any point between 10 and 20 calendar days after the initial request. This allows a reasonable period of at least 10 calendar days after the followup for response. Current operating instructions provide that the disability determination services may contact the claimant to assist in obtaining needed evidence from a source who has not responded to the initial request. The final regulations provide that a consultative examination may be ordered while awaiting existing medical evidence when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative.

*Comment:* One commenter questioned whether the treating source should be used for a consultative examination when that source has been uncooperative in furnishing existing medical evidence.

*Response:* A provision has been included in §§ 404.1519i and 416.919i of these final regulations for ordering a consultative examination from a source other than the treating source when the treating source is known to be uncooperative in furnishing existing medical evidence. The example included in the provision illustrates that when the treating source has consistently failed to furnish existing medical evidence, we should not then use the source to perform the consultative examination.

*Sections 404.1513/416.913 Medical Evidence of Your Impairment*

*Comment:* Several commenters objected to use of the new phrase "medical source statement * * *" instead of the term "medical assessment." They believed that the change from "medical assessment" was made to allow consideration of observations by nonmedical personnel. One commenter stated that the new phrase is a reversal of longstanding SSA policy and is essentially a request for a residual functional capacity finding. Many commenters were concerned that the request to a treating physician for the statement of what the individual can still do despite impairment(s) will result in frequent conflict with the State agency staff medical or psychological consultant's residual functional capacity assessment which is based on the full medical record. These commenters thought that, generally, since the physician would not have access to the claimant's full record, the opinion of the treating source may be substantially different from the residual functional capacity assessment provided by the State agency physician, resulting in increased State agency time required to rebut the solicited opinion.

*Response:* The new phrase "medical source statement" does not include observations by non-medical personnel. We clearly indicated in §§ 404.1513(b)(6) and 416.913(b)(6) that the "statement as to what a person can still do despite impairments" should be provided by a medical source. The request for a statement from a medical source about what a person can still do is not a reversal of SSA policy. It has always been our policy to request "medical assessments" from treating sources because these statements can provide important evidence about the actual functional effect of an individual's impairment(s). However, because the term "medical assessment" was open to various interpretations, we decided that the clarification of our policy was necessary. The final rules clarify that we will request each treating source and consultative source to provide a statement of what the claimant can still do despite impairments. Each opinion received will be considered along with all of the medical and other evidence in arriving at the residual functional capacity assessment. We agree that the State agency examiner or medical or psychological consultant may be required to spend additional time resolving differences between these opinions and the medical consultant's residual functional capacity assessment, but we believe this is necessary in our decision making process in order to properly weigh these opinions.

*Comment:* One commenter believed the list of work-related activities should be complete rather than a partial list of activities. Two commenters believed that the statement of the medical source's opinion about a claimant's mental impairment should include "to concentrate" and "to persevere," since these are more often the abilities lost in chronic mental illness. Another commenter stated that the information to be included in a medical report does not address complaints of pain and limitations.

*Response:* We have made clear in the regulations that the list of work-related activities is not all-inclusive and is not limited to the physical and mental capabilities as listed. However, even though the notice of proposed rulemaking at §§ 404.1513(c)(2) and 416.913(c)(2) referred to the ability to reason or make occupational, personal, or social adjustments, §§ 404.1545(c) and 416.945(c) refer instead to the ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting. We believe that the language of the final regulations should be consistent throughout. We have, therefore, revised the language of these final regulations at §§ 404.1513(c)(2) and 416.913(c)(2) and §§ 404.1519n(c)(6) and 416.919n(c)(6) about mental capabilities to be consistent with the language in §§ 404.1545(c) and 416.945(c).

*Comment:* Two commenters believed that excluding disabled widows or widowers from the requirement that a medical report should include a statement about what the claimant can still do despite his or her impairment will result in the exclusion of evidence needed in order to determine the eligibility of a claimant seeking widow's benefits based on disability.

*Response:* As a result of the enactment of section 5103 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, on November 5, 1990, we will no longer exclude disabled widows or widowers from the requirement that a medical report should include a statement about what the claimant can still do despite his or her impairment.

**Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations**

*Sections 404.1519/416.919 The Consultative Examination*

*Comment:* One commenter suggested adding a provision that a consultative examination may be obtained at the claimant's request.

*Response:* The claimant or the claimant's representative may request a consultative examination. However, §§ 404.1517 and 416.917 state that we will not pay for any medical examination arranged by the claimant or his representative without our advance approval.

*Comment:* One commenter suggested rewording of the language that a consultative examination "must be obtained" to "should be obtained" since "must" is too directive and rigid. Several commenters indicated that in obtaining additional information readily available from a medical source, trained disability examiners or other professionals are just as effective as doctor-to-doctor contact. One commenter asked if the purchase of a consultative examination should be approved if a telephone contact to the treating source has not first been made. One commenter stated that there should be no instance of recording conversations with a medical source unless that source affirms the substance of any conversation with us by his or her signature.

*Response:* As explained above, we have reorganized paragraphs on recontacting medical sources. Paragraphs 404.1519(b) and 416.919(b) as set out in the Notice of Proposed Rulemaking are now §§ 404.1512(e) and 416.912(e), respectively. We believe this reorganization better describes the process of the efforts of requesting existing medical evidence before obtaining a consultative examination. In rewording the new §§ 404.1512(e) and 416.912(e), we deleted the phrase "must be obtained." Reference to doctor-to-doctor contact was also deleted since existing operating instructions indicate that routine requests for needed information can be made by trained disability adjudicators. We have made clear in these final regulations at §§ 404.1512 (e) and (f) and 416.912 (e) and (f), that before we request a consultative examination we will first recontact the treating source or other medical source to determine whether the information we need is readily available. The decision to purchase a consultative examination will be made after we have given full consideration to whether or not the additional information is readily available from the records of the claimant's medical sources. Such full consideration includes making a telephone contact with the treating source. We agree that the substance of the conversation with a medical source must be affirmed by the source's signature. We cover this in our operating instructions, and we have added this requirement to the final regulations at §§ 404.1512(e)(1) and 416.912(e)(1). Every reasonable effort will be made to obtain the additional information or to obtain the source's signature when medical evidence is obtained over the telephone.

*Sections 404.1519a/416.919a When We Will Purchase a Consultative Examination and How We Will Use It*

*Comment:* One commenter indicated that the regulations reflect using a medical source other than the treating source to resolve conflicts, perform specialized tests, and to evaluate changes in a claimant's condition. Two commenters stated that there is no basis to seek a consultative examination when there is an indication of a change in the claimant's condition unless the treating source has first been contacted for the information and cannot provide it. Two commenters stated that unless the treating source is first contacted, SSA will not be able to determine that the source cannot reconcile an inconsistency or ambiguity. One commenter stated that the regulations should make clear that "conflict" involves solely a conflict within the medical data already submitted and not between the opinion of nonexamining physicians and the other medical evidence in the case. Two commenters believed that the provisions appear to indicate that a consultative examination will be required regardless of the quality of the evidence in file from a treating source. These two commenters believed that the language in §§ 404.1519a(b)(7) and 416.919a(b)(7) was unnecessarily broad and should be refined or deleted.

*Response:* The regulations state that when the evidence we receive is inadequate to allow us to determine whether the individual is disabled, or when the treating source's report or other medical source's report contains a conflict or an ambiguity, we will give every consideration to whether the additional information we need is readily available from the records of the claimant's medical source. Recontact should be made with the treating source or other medical source to determine whether the additional information we need is readily available. We try to make decisions based on the evidence from treating sources because they are often in the best position to provide detailed longitudinal information about a claimant's condition. However, when the source cannot provide the necessary information, we will purchase a consultative examination from the treating source whenever possible, subject to the exceptions noted in §§ 404.1519i and 416.919i of these final regulations. We have made clear in the regulations that when a report from a treating source contains a conflict or an ambiguity, we will give every consideration to first recontacting the treating source for the additional evidence or clarification. The conflict may exist within the medical data or between opinions of the physicians involved in the claimant's case. We will, however, make every reasonable effort to recontact the treating source to resolve the conflict. We agree with the commenter that paragraph (7) of §§ 404.1519a(b) and 416.919a(b), as set out in the Notice of Proposed Rulemaking, should be deleted from these final regulations and have done so.

*Comment:* One commenter said that consideration of vocational evidence, as mentioned in the Notice of Proposed Rulemaking, is usually not a factor in deciding whether or not to purchase a consultative examination unless there is evidence of work activity. One commenter stated that considering the vocational background from the background report before purchasing a consultative examination may delay the case and may ultimately be unnecessary.

*Response:* We agree with these commenters and have deleted reference to the vocational background report.

*Sections 404.1519b/416.919b When We Will Not Purchase a Consultative Examination*

*Comment:* Several commenters believed that the situations given in this section to illustrate when a consultative examination will not be purchased are vague and will result in the improper denial of benefits. Three commenters indicated that clarification is needed regarding issues involving work activity. Three commenters believed that these standards may have a significant negative impact on persons with mental impairments. Several commenters said that the intent and usage of situations (f) and (g) of § 404.1519b need particular clarification on how these situations will be applied.

*Response:* These situations are provided as guidelines for us to use in exercising our judgment about obtaining a consultative examination based on the facts of a particular case. We make special efforts to ensure against denial of benefits to all individuals who may be severely impaired and unable to assist us in obtaining evidence, especially those who may be mentally impaired. The SSA field offices are responsible for resolving issues of work activity. Because resolution of the medical issues may be unnecessary, a consultative examination should not be ordered when the State agency recognizes that specific issues concerning evaluation and consideration of substantial gainful activity have not been resolved. We believe our

regulations already safeguard against the denial of benefits to the mentally impaired. We have deleted situations (f) and (g), as set out in the Notice of Proposed Rulemaking, from these final regulations because those situations could be subject to misinterpretation.

*Sections 416.919c Purchase of Title XVI Slight Impairment Examination*

*Comment:* Many commenters expressed concern that this section appears to be designed to allow "quick and easy" determinations of nondisability under title XVI. Several commenters disagreed with letting the claimant make the arrangements for his or her own consultative examination. They believed that it is far more important that SSA do "usual development" of these cases in order to document and properly assess them. The commenters noted that this section presumes that if a person applies for Supplemental Security Income benefits because another agency requires a title XVI determination, then the individual suffers from only a slight impairment. One commenter stated that this section is in direct conflict with all of the safeguards established in other sections of the regulations. Some commenters were concerned about the quality of and lack of timeframes for the medical report required under this section. One commenter said that these special procedures should not be mandated, and if implemented, they should be optional.

*Response:* We agree that there should not be a different procedure for determinations of nondisability for title XVI claimants than for title II claimants; therefore, we have decided to delete the proposed provision.

*Sections 404.1519e/416.919e Purchase of Consultative Examinations at the Reconsideration Level*

*Comment:* One commenter indicated that the regulations should include the circumstances when a consultative examination will be needed at the reconsideration level. Several commenters stated that the requirement to purchase a consultative examination at the reconsideration level based on a treating source's statement would not be cost-effective or productive if the statement was adequately considered at the initial level. Other commenters stated that it would be inappropriate to allow the same treating source to perform a consultative examination at the initial and reconsideration levels. They believed that the regulations should require that a consultative examination at the reconsideration level be performed by a different physician. Others believed that the purchase of a consultative examination from the claimant's treating physician should be mandatory.

*Response:* We have deleted §§ 404.1519e and 416.919e and §§ 404.1519f and 416.919f, as set out in the Notice of Proposed Rulemaking, from these final regulations since we did not intend to create different standards at the reconsideration or other appeals levels. The rules set forth in §§ 404.1519a and 416.919a and §§ 404.1519b and 416.919b of these final regulations for purchasing a consultative examination are applicable at the reconsideration and other appeals levels of review. When the treating source expresses the opinion that the claimant is disabled, a consultative examination may be purchased at the reconsideration level to ensure that all relevant evidence has been obtained and that we have thoroughly reconsidered the claim. We believe it is appropriate to have the same treating source perform the consultative examination, when possible, at both the initial and reconsideration levels because the treating source is often in the best position to provide detailed longitudinal information about a claimant. Therefore, the treating source is the preferred source for a consultative examination at every level of adjudication, subject to the exceptions in these rules.

*Sections 404.1519f/416.919f Securing Medical Evidence at the Administrative Law Judge Hearing Level*

*Comment:* One commenter stated that there should be specific language in this section against administrative law judge *ex parte* contacts with either treating or consultative physicians. Several commenters stated that this section excuses the administrative law judge from making every reasonable effort to get information from treating sources. Two commenters said that the same provisions for consultative examinations at the reconsideration level should apply at the administrative law judge hearing level.

*Response:* Subpart P and subpart I of the regulations are not the appropriate places to state policy on administrative law judge *ex parte* contacts because *ex parte* contacts can involve all types of determinations, not only those about disability and blindness. We will consider addressing this issue in subpart J of the regulations. The agency's "every reasonable effort" standard to help a claimant get medical evidence from his or her own medical source, as set forth in §§ 404.1512(c)(1) and 416.912(c)(1) also applies to the administrative law judge. We did not intend to create different rules for obtaining a consultative examination at the reconsideration and the hearing levels. The rules that apply at the initial level also apply at the reconsideration, administrative law judge and Appeals Council levels of review.

**Standards for the Type of Referral and for Report Content**

*Sections 404.1519g/416.919g Who we will Select to Perform a Consultative Examination*

*Comment:* One commenter recommended that to allow the State agency to exercise judgment in determining when to order a specific test or a comprehensive examination to determine the person's fitness to undergo the procedures involved in the test or examination, the term "we may" should be substituted for the phrase "we will" purchase only the specific evidence needed. One commenter stated that certain test procedures should never be ordered without a concurrent medical examination.

*Response:* The regulations, as well as our operating instructions, clearly intend to allow the State agency to exercise judgment in obtaining only the type of examination and/or test needed for adjudication. We will order only the specific examination or test needed. Sections 404.1519m and 416.919m of these final regulations ensure that certain test procedures that may entail significant risk to the claimant are not ordered for the evaluation of disability. The disability interview form and pertinent medical evidence available permits the examining physician to be aware of the claimant's condition.

*Comment:* Several commenters stated that it was unreasonable and virtually impossible to expect monitoring of the credentials of the support staff of consultative examination providers because of their sheer size in numbers, their rapid turnover rate, and the broad range of certifications needed to operate or perform certain functions that would be involved.

*Response:* We recognize the overwhelming task it would be for the State agency to monitor continually 100 percent of the support staff of all of their consultative examination providers. We also recognize that this task will become even greater as more new treating sources are used for consultative examinations. However, we are also committed to ensuring that program safeguards are in place. Additionally, congressional concerns have been raised regarding the use of unqualified

support staff to assist the consultative examination physician in the examination process. Therefore, we have retained the requirement outlined in this section governing the qualifications of consultative examination providers. We will add to our operating instructions the requirement that each consultative examination panel source provides the State agency for which he or she agrees to do consultative examinations, a signed agreement certifying that all support staff he or she uses in the performance of a consultative examination meet the appropriate licensing or certification requirements of the State. If the State agency discovers a violation of this agreement by a consultative examination provider, it will take appropriate action to ensure that the problem is corrected. If the problem persists, the State agency will cease using that consultative examination provider.

*Comments:* One commenter wanted to know who constitutes "support staff" and what documentation of the "appropriate licensing or certification" must be maintained by the State agency. Another commenter indicated that medical sources should be instructed to note on the report when support staff assisted, their qualifications, what they did, and the amount of supervision exercised by the consultative examination provider.

*Response:* We have added an example of "support staff" in §§ 404.1519g(c) and 416.919g(c) of these final regulations. We have not adopted the suggestion that consultative examination sources be instructed to note on the report when support staff assisted, their qualifications, what they did, and the amount of supervision exercised by the consultative examination provider. We believe such requirements are excessive because consultative examination sources are already aware of their responsibility and liability for the welfare of the claimant during the consultative examination as well as for the accuracy of the consultative examination report. The consultative examination sources' motivation to maintain qualified support staff will be reinforced by the signed agreement discussed above. This signed agreement will also serve as the documentation maintained by the State agency regarding the qualifications of the support staff used by its consultative examination providers.

*Comment:* Two other commenters wanted to know what constitutes the training and experience to perform the type of examination or test requested and how this is to be applied to treating sources selected to perform consultative examinations.

*Response:* Where the treating source believes that he or she is experienced in the care of the person with the alleged impairment and is willing and able to do the examination, the treating source will be the preferred source to perform the consultative examination.

*Sections 404.1519h/416.919h Your Treating Physician or Psychologist*

*Comment:* Some commenters indicated that the policy on utilizing the treating source as the primary source for a consultative examination could reward a treating source who does not submit adequate evidence by purchasing a necessary consultative examination from that source. Two commenters felt this section as written allows SSA to justify excluding most treating sources from use as consultative examiners. Two commenters stated that there should be a provision notifying the claimant of the reasons his or her treating source was not selected to perform the consultative examination.

*Response:* There is always the potential that a treating source may not provide us with the existing evidence we need. However, the treating source is the preferred source for a consultative examination. We do not intend this provision to mean that a treating source should not be used for a consultative examination. We see no benefit in notifying the claimant of the reasons why a source other than the treating source was utilized for the consultative examination. The claimant or the claimant's representative retains the right to object to the use of a specific physician.

*Sections 404.1519i/416.919i Other Sources for Consultative Examinations*

*Comment:* One commenter suggested that the regulations reflect that licensed professional counselors be recognized to perform psychological examinations. Another commenter stated that school officials, clinicians, and others may have critical information needed in the determination of disability.

*Response:* Sections 404.1513 and 416.913 of the regulations indicate that we need evidence from acceptable medical sources to determine the existence or severity of an impairment. Since licensed professional counselors are not physicians or psychologists, they cannot serve as consultative examination providers. However, medical evidence from other sources of medical information and evidence from nonmedical persons may be added to the record.

*Sections 404.1519j/416.919j Objections to the Designated Physician or Psychologist*

*Comment:* Several commenters indicated that there should be guidelines as to how the State agency will process objections based on this provision and how these objections will be fairly resolved. Two commenters stated that there should be a requirement that claimants be informed of their right to object to a consultative examination. One commenter said that the claimant should be provided an opportunity to object to an examination both before and after the examination has occurred. Another commenter stated that the regulations should emphasize that claimants or their representatives have the right to purchase an examination with any physician they choose and to have SSA consider that report in the determination process.

*Response:* The regulations and current operating instructions contain guidelines about how objections by the claimant or his or her representative to a specific physician should be handled. Claimants have the right to object to any and every step in the processing of their claims. To single out the consultative examination would appear to give that step undue emphasis or weight in the process.

Sections 404.1517 and 416.917 of these final regulations indicate that the claimant or his or her representative can submit evidence from a purchased examination from the physician of his or her choice. However, we will not pay for any medical examination arranged by the claimant or his or her representative without our advance approval. When the evidence is received, it is considered along with all medical and other evidence in the individual's case record in making a determination as to disability.

*Sections 404.1519k/416.919k Purchase of Medical Examinations, Laboratory Tests and Other Services*

Some commenters indicated that SSA should consider issuing its own Federal fee schedule, perhaps based on comparable Medicare reimbursement rates. Some commenters noted that §§ 404.1519k(a) and 416.919k(a) do not consider the problem of a State with such a low fee schedule that poor quality evidence is purchased and recruitment of consultative examination providers is impossible. One commenter stated that the word "nominal" handling fee in paragraph (b)(2) should be better defined. Some commenters were concerned that in paragraph (b)(2), the situation where the examining physician

uses an independent laboratory for testing and bills the State agency for a higher amount, was not clearly addressed. There was also some concern that applicant travel costs might increase because the examining physicians would not provide services with these payment restrictions. Some commenters were concerned that paragraph (c) did not fully address how the State could document the rates of payment it uses.

*Response:* Under existing regulations, the State determines the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other public agencies in the State for the same or similar type of service. The States have traditionally been responsible for determining rates of payment. With the exception of a few State agencies and isolated fee schedule problems, this arrangement has worked well over the years. However, SSA is considering whether a maximum fee schedule for laboratory tests, based on Medicare's limitation amounts for laboratory test fee schedules is feasible. We are currently studying the issue and what course of action, if any, we should take.

We do not believe a minimum payment standard is needed for the purchase of medical examinations, laboratory tests and other services. When a State is experiencing problems with poor quality medical evidence because of low payment rates, SSA will try to assist the State agency or its parent agency to correct the problem. We wish to point out, however, that there are many States with low fee schedules that nevertheless obtain high quality evidence. A high rate of payment does *not* guarantee quality evidence.

We do not believe publishing an exact amount for a physician's handling fee in regulations form is appropriate. We believe determining the actual amount should be based on local circumstances in accordance with general operating guidelines provided by SSA.

We have added clarifying language to this section which provides that when an examining physician uses an independent laboratory for testing, the amount of reimbursement will not exceed the independent laboratory's billed cost of the service or the State's rates of payment, whichever is the lesser amount.

Although some concern was expressed that claimant travel costs might increase because some physicians would not want to work pursuant to these payment restrictions, we do not believe this would outweigh the other considerations of regulating and limiting reimbursement to the service providers within reasonable bounds.

The intent of this section is to ensure that there are no excessive payments or markups for laboratory tests and other services billed by physician providers or laboratories.

For purposes of audit as well as other reasons, State agencies continue to be responsible for documenting the basis for the rates of payment they use. These include such factors as:

(1) Blue Cross/Blue Shield physician payment profiles,

(2) Rates of payment of other State and Federal agencies using same or similar services (i.e., Medicaid and Medicare),

(3) State surveys of physicians, hospitals and laboratory charges,

(4) Consumer price index and wage data of the medical community, and

(5) Requests by providers for rate changes.

The State agency will be required to submit a copy to SSA of the fee schedule and a statement indicating what methodology was used.

*Sections 404.1519/416.919 Requesting Examination by a Specific Physician, Psychologist, or Institution—Administrative Law Judge Hearing Level*

*Comment:* Two commenters stated that this section inappropriately limits the administrative law judge's obligation to seek evidence from the treating source. Some commenters indicated that this provision allows the administrative law judge to designate his or her "favorite" physician.

*Response:* We have deleted §§ 404.1519 and 416.919, as set out in the Notice of Proposed Rulemaking, from these final regulations since an administrative law judge and the Appeals Council will follow the same procedures for development of evidence and obtaining consultative examinations that are followed at the initial and reconsideration levels. There may be special circumstances aside from those listed in §§ 404.1519a and 416.919a in which an administrative law judge will request a consultative examination; even in these circumstances, the claimant's treating source will be the preferred source for the consultative examination.

*Sections 404.1519m/416.919m Diagnostic Tests or Procedures*

*Comment:* One commenter suggested that this section be expanded to ensure that diagnostic procedures of any sort that would be life-threatening will not be ordered. One commenter suggested that this section should include an exhaustive list of diagnostic procedures that are precluded. One commenter stated that the regulations should include a provision for consulting with treating sources prior to ordering extensive and perhaps invasive examinations.

*Response:* The intent of this provision is that diagnostic tests or procedures that may be of significant risk to the claimant shall not be ordered. It would be impossible to provide an exhaustive list of diagnostic procedures that are precluded. The situations provided in the regulations are examples of such procedures and are not all-inclusive. Although we do not routinely contact the treating source prior to ordering consultative examinations, sound medical judgment is exercised in determining when to purchase an examination. The medical and/or background report(s) containing information about the claimant will serve as pertinent evidence in determining when an examination should be purchased. As an additional safeguard, we are adding a requirement that a medical consultant must approve the ordering of any diagnostic test or procedure where there is a question of significant risk to the claimant.

*Sections 404.1519n/416.919n Informing the Examining Physician or Psychologist of Examination Scheduling, Report Content, and Signature Requirements*

*Comment:* Several commenters expressed concern that the solicited "statements of what a person can still do" will cause additional work for the State agency and result in additional difficulty in the decisionmaking process. One commenter suggested that a statement should be added that the physician's opinions must be supported by medical findings. Two commenters stated that the regulations put treating and consultative physicians in a role of assessing residual functional capacity.

*Response:* We agree that the solicited statement of what a claimant can still do despite his or her impairment results in additional work for the State agency. But the statements are important to the assessment of residual functional capacity in the decisionmaking process because they are the opinions of medical sources who have examined the claimant. Sections 404.1527 and 416.927 of the final regulations contain policy with respect to treating source opinions. Among other things they provide instructions on evaluating treating source medical opinions with respect to the nature and severity of an

impairment that are well-supported by medical findings, those opinions that are not supported by medical findings, and those opinions that are inconsistent with medical or other evidence. We will not request the treating source or consultative examination source to provide a residual functional capacity assessment. The State agency medical or psychological consultant, the administrative law judge, or the Appeals Council is responsible for assessing residual functional capacity. A treating source or consultative examiner will be requested to provide a statement of what work-related activities such as sitting, standing, etc., the claimant can do despite impairments based on his or her knowledge of the claimant. Each statement received will be considered along with the medical and other evidence in arriving at an assessment of the claimant's residual functional capacity based on all of the evidence.

*Comment:* One commenter stated that this subsection should indicate that only examining physicians, not nonexamining staff persons, should furnish the statement of what a person can still do despite impairment(s). One commenter said that a similar statement is needed from every treating source.

*Response:* The first comment was not entirely clear to us, but we assume that by "nonexamining staff persons" the commenter meant State agency medical or psychological consultants. As we have explained, State agency medical or psychological consultants do not furnish "statements about what a person can still do," which we have defined in §§ 404.1513(b)(6) and 416.913(b)(6) as statements from medical sources based on their own findings. State agency medical or psychological consultants provide assessments of residual functional capacity, which are formal administrative determinations based on consideration of the entire case record, including the medical and the pertinent nonmedical evidence. The final regulations indicate, in §§ 404.1513 and 416.913, that the statement of what a person can still do despite his or her impairment(s) should be included in medical reports from treating sources or sources of record. The final regulations also provide that the absence of the medical source's statement of what the claimant can still do does not make the medical report incomplete. Additionally, §§ 404.1519n and 416.919n of the final regulations clearly indicate that the statement is to be made by the physician or psychologist who performs the consultative examinations. Also, operating instructions indicate that statements will be solicited from all treating sources and/or consultative examining physicians or psychologists.

*Comment:* One commenter suggested that the initial request for evidence to treating sources be more complete.

*Response:* The final regulations stress the importance of indicating to the treating source and/or consultative source what a complete examination should contain. We ask the treating source to provide the evidence already in the records of the claimant and a statement of what the claimant can do in spite of his or her impairments(s). Sections 404.1513(b) and 416.913(b) pertain to what a treating source's medical report should include, and §§ 404.1519n (b) and (c) and 416.919n (b) and (c) of these final regulations pertain to the report content for a consultative examiner.

*Comment:* Several commenters were concerned with how the State agency would be able to monitor consultative examination scheduling, and one believed it could not be done unless the consultative examination provider scheduled only Social Security referrals. Another commenter stated that the provision setting minimum timeframes for the scheduling of consultative examinations be deleted. This commenter believed that there is no guarantee that any given examination will meet the limits as proposed because much depends on the claimant's subjective perception of the length of the consultative examination.

Concerns were also raised that the consultative examination physician's or psychologist's intelligence would be insulted by the scheduling interval requirements.

*Response:* We are committed to protecting the public interest by maintaining program safeguards against overscheduling consultative examinations. Both the Subcommittee on Intergovernmental Relations and Human Resources of the House Committee on Government Operations and the General Accounting Office recommended that minimum scheduling intervals become requirements for consultative examination providers. Therefore, we have retained the scheduling interval requirements in this regulation.

We are aware that in the past the State agencies were heavily dependent upon the claimant's subjective perception of the length of the consultative examination as an indicator that overscheduling of consultative examinations might be occurring. We are also cognizant of the extra work that will be imposed on State agencies in monitoring the new scheduling intervals especially when Social Security claimants represent only a part of the consultative examination provider's caseload. For these reasons, we will add to our operating instructions the requirement that key consultative examination providers will sign a statement of agreement with the State agencies certifying that consultative examinations will not be scheduled any closer together than the minimum timeframes set forth in this regulation.

A State agency will maintain its normal consultative examination oversight activities. If a State agency discovers a violation of the above agreement by a consultative examination provider, it will take appropriate actions to ensure that the problem is remedied. If the problem persists, the State agency will cease using that consultative examination provider.

Finally, there is no intent to demean the intelligence or professional integrity of consultative examination physicians and psychologists by establishing scheduling interval requirements; rather, we believe there is a legitimate need to ensure that sufficient time is allowed for examining the claimant.

*Comment:* Several commenters suggested that the word "minimum" precede the scheduling intervals to avoid the misunderstanding that State agency fees can be multiplied incrementally by the specified times. One commenter thought minimum timeframes were a good idea but thought it may be better to also list average times (which will always exceed the minimum) to help avoid examination mills based on the minimum scheduling intervals.

*Response:* We adopted the suggestion to add the word "minimum" in front of "scheduling intervals." We did not choose to show average times for scheduling intervals since we believe the minimum times listed are sufficient to prevent overscheduling.

*Comment:* Several commenters did not think the difference between a "General Medical Examination" and a "Comprehensive General Medical Examination" was clear, while still another commenter thought the phrase "greater or less frequency," which refers to scheduling intervals of consultative examinations by a consultative provider, was not consistent with the language that preceded it.

*Response:* To clarify the potential confusion between the terms "general medical examination" and "comprehensive general medical examination," we deleted "general medical examination" from the list of

examinations. In response to the other commenter, we reworded the sentence immediately following the list of examinations to read: "We recognize that actual practice will dictate that some examinations may require longer scheduling intervals depending on the circumstances in a particular situation."

*Comment:* One commenter thought that the time spent with the patient face-to-face should be recorded. Another commenter wanted to know if this regulation was actually discussing scheduling intervals or the length of the consultative examination itself. Finally, one commenter questioned whether the scheduling interval times were sufficient if they were to include the administering of needed tests.

*Response:* We did not adopt the comment that the time spent face-to-face with the patient be recorded because this section deals with overscheduling of consultative examinations and not with the duration of the examination. We deleted the word "duration" from the title of the section for clarity.

Also for clarity, we have added an explanation that the term "scheduling intervals" pertains to time set aside for the individual, not to the duration of the consultative examination.

These scheduling intervals are minimum time periods, and we contemplate that increased time may be necessary for the administration of additional laboratory tests or procedures.

*Comment:* Two commenters expressed concerns with the provision allowing support staff to help perform consultative examinations because they believed this area was open to liberal interpretation and was a potential area for abuse.

*Response:* We believe that the concerns raised about the possible liberal interpretation and potential abuse of the provision allowing support staff to help perform consultative examinations are not justified. The assistance to consultative examination providers by their support staff in the performance of a consultative examination has been a part of the consultative examination process since its inception and has worked successfully. As stated previously, the purpose of this regulation is to provide program safeguards to help ensure that when support staff are used, they are properly qualified and the validity of the consultative examination is not jeopardized. The consultative examination provider remains responsible for the examination and must sign the report to attest to that responsibility.

*Sections 404.1519o/416.919o When a Properly Signed Consultative Examination Report Has Not Been Received*

*Comment:* One commenter indicated that when an unsigned consultative examination report is consistent with existing evidence and supports a favorable decision, another consultative examination should not be obtained when the original consultative examination was performed by a now deceased physician. Two commenters stated that it was unnecessary or not cost-effective to duplicate consultative examinations to obtain signatures.

*Response:* We agree that it would be unnecessary to obtain a second consultative examination when a consultative examination performed by a now deceased physician is consistent with existing evidence and supports a fully favorable decision. We have revised the final regulations accordingly at §§ 404.1519o(a) and 416.919o(a). We will not use an unsigned consultative examination report to make disability determinations or decisions that are unfavorable to the claimant. If necessary, and notwithstanding the cost, we will obtain a second consultative examination to obtain a properly signed consultative examination report.

*Sections 404.1519p/416.919p Reviewing Reports of Consultative Examinations*

*Comment:* One commenter stated that the examples which used "flail limb" and "claw hands" were offensive, were obvious, and reflected physical impairments. Two commenters said that the examples should be expanded to include pain, alcoholism, and depression.

*Response:* We have revised the examples to reflect the commenters' suggestions.

*Comment:* Several commenters thought that the adequacy of the consultative examination report is determined by SSA standards, not "the course of a medical education."

*Response:* The intent here is that the report be made by physicians according to recognized writing standards set by the medical community and the disease, impairments, and complaints are adequately addressed as required by SSA.

*Comment:* One commenter stated that this section should include provisions that the claimant or his representative may submit questions to the consultative examiner. One commenter stated that SSA should obtain the claimant's authorization before any report is automatically released to a treating source. Another commenter added that any consultative examination report should be given to the treating source for comments unless the claimant objects.

*Response:* We have no objections to the claimant or his or her representative submitting questions to the consultative examiner. We believe, however, that this does not have to be included in regulations. Claimant authorization for providing a copy of the consultative examination report to the treating source is covered in existing operating instructions. However, we are adding language stating our policy on claimant authorization for providing a copy of the consultative examination report to the claimant's treating source as a provision in the final regulation at §§ 404.1519p(c) and 416.919p(c). Our operating instructions also provide that when a claimant attends a consultative examination performed by a nontreating source and returns a completed, signed authorization, a copy of the consultative examination report is then mailed to the treating source. When the consultative examination turns up diagnostic information or test results that indicate a condition that is life-threatening to the claimant, we will refer the consultative examination report to the claimant's treating source regardless of authorization. It is administratively impractical to routinely furnish the consultative examination report to the treating source for comments.

*Sections 404.1519q/416.919q Conflict of Interest*

*Comment:* Two commenters recommended that the "family members" of State agency medical or psychological consultants who cannot hold financial interests in a business which provides consultative examinations in order to avoid a conflict of interest be defined in the regulations.

*Response:* We have not adopted the recommendation that "family members" be defined because we prefer to decide on a case-by-case basis whether a conflict exists between the financial interest of a particular family member and the responsibilities of the State agency medical or psychological consultant.

*Comment:* One commenter suggested that if State agency review physicians and psychologists get approval to perform consultative examinations, claimants should be notified of this fact so they can object to having their consultative examination performed by the designated physician or psychologist.

*Response:* We disagree. We believe that the claimant does not need to know

that the physician or psychologist designated to perform the consultative examination is a State agency medical or psychological consultant. In the following situations, State agency review physicians and psychologists might be permitted to perform a consultative examination:

1. When no other physician or psychologist with the prerequisite special expertise is reasonably available. For example, the only psychiatrist in Guam willing to perform consultative examinations is also a State agency review physician. Similar situations exist elsewhere (especially in large and sparsely populated States) where the limited physician population in certain available specialties requires occasional use of a State agency review physician to perform a consultative examination.

2. When to do otherwise would result in inordinate scheduling delays or extensive travel by the claimant.

3. When, despite a large physician population to choose from, no other option is available because of the conditions under which the consultative examination must be performed (e.g., the consultative examination must be performed on a claimant confined in an institution or other facility).

In the above situations, it is to the claimant's advantage to have the State agency review physician or psychologist perform the consultative examination. Regulations §§ 404.1517, 404.1519j, 416.917, and 416.919j, and our operating instructions provide that the claimant or his or her representative will be given the name of the physician or psychologist who will perform the consultative examination and the procedures to follow when the claimant objects to using a specific physician or psychologist.

*Comment:* One commenter suggested that we add "financial interest in a corporation" to the list of prohibited financial interests of State agency medical or psychological consultants or their family members to make it clear that "corporations" were included with "medical partnerships" and "similar relationships."

*Response:* We agree and have revised the first paragraph of §§ 404.1519q and 416.919q to include the word "corporation."

*Sections 404.1519s/416.919s Authorizing and Monitoring the Consultative Examination*

*Comment:* Numerous commenters objected to the requirement of medical or supervisory approval of a consultative examination authorization or purchase because it did not recognize the professional competence of experienced disability examiners. One commenter wanted to know if medical or supervisory approval of the authorization of a consultative examination was going to be required for every type of case and every adjudicator regardless of individual consultative examination rates.

*Response:* Our basic objective is to regulate to the extent necessary to assure effective, efficient, and uniform administration of SSA's disability programs throughout the United States.

Procedures for medical or supervisory approval of a consultative examination authorization or purchase are necessary for every type of case at the initial and reconsideration levels, including continuing disability reviews, for the following reasons:

It serves to help standardize and make less subjective the consultative examination authorization and purchase process by adding an additional level of professional review and control;

2. It will provide additional program safeguards to help ensure that disability claimants are not subjected to unnecessary consultative examinations; and

3. It will serve to keep consultative examination costs down by assuring that only necessary procedures are ordered.

This requirement also allows a State agency flexibility in deciding which professional review (medical or supervisory), or combination thereof, is best for its management of the consultative examination process.

*Comment:* One commenter wanted to know if this section applied to open-ended administrative law judge authorizations. (We believe that the commenter was referring to the fact that the State agencies are usually not supposed to question administrative law judge requests for consultative examinations. In other words, such requests are normally open-ended in that they are not restricted by the judgment of the State agencies.)

*Response:* Administrative law judge requests for consultative examinations will only need to be approved by a State agency medical consultant when a significant risk to a claimant may be involved if the examination is performed.

*Comment:* One commenter acknowledged the importance of onsite reviews but thought they were disruptive to physicians' offices and that too many people on the visiting team would be counterproductive. It was suggested that these reviews be handled more like "visits" rather than "inspections" with no more than two people on the team.

*Response:* Comprehensive onsite reviews by SSA are essential to an effective and successful consultative examination oversight process. The Secretary's responsibility for the effective stewardship of SSA's disability programs coupled with SSA's commitment to protect both the public welfare and the trust fund, requires that SSA exercise ongoing consultative examination oversight/quality reviews of every aspect of the consultative examination process, from the consultative examination report to the consultative examination itself. In addition, both Congress and the General Accounting Office have called for the more comprehensive, specific, and uniform consultative examination oversight procedures which are now reflected in this regulation. We expect the high level of scrutiny by the public, Congress, General Accounting Office, and other interested parties will continue. The sensitivities of the medical/professional relationship between the State agency and the consultative examination sources must be held in proper perspective in view of these realities. It is for these reasons that we have retained the consultative examination onsite review requirements as written in the Notice of Proposed Rulemaking. These will be conducted in a professional manner as reviews and not merely as "visits," and the number of review team members will be determined by the scope of that review.

*Comment:* One commenter wanted a requirement that the State agency must make unannounced monitoring visits of consultative examination providers, particularly key providers.

*Response:* We do not believe that State agencies should routinely conduct unannounced visits to their consultative examination providers. We believe that such a requirement is excessive and would place an unnecessary strain on the State agencies' relationship with their consultative examination providers. On the other hand, we recognize that situations do exist when unannounced visits are warranted and should be made.

We believe the State agencies are usually in the best position to judge when this is necessary and they should exercise this option when circumstances indicate it should be used.

*Comment:* Several commenters wanted the second condition under the definition of key providers, which lists providers with practices of medicine and osteopathy as possible consultative

examination providers, to include psychologists.

*Response:* We agree with the comment and have amended the definition of key consultative examination providers to include psychologists.

*Comment:* Several commenters expressed concern about the requirement for onsite reviews of key providers where claimants are present, causing interference with the consultative examination and placing undue strain on the claimant.

*Response:* Obtaining the views of the claimant on the quality of consultative examination providers is also a vital part of consultative examination oversight. Onsite reviews provide the opportunity for face-to-face interviews with claimants. Generally, our experience has shown that these interviews have no adverse impact on claimants. We believe that the comments from claimants will facilitate more effective management of consultative examination providers, provide incentives to providers to maintain quality examinations, and improve public relations.

Additionally, the General Accounting Office stated in its December 1985 report on the consultative examination process that "claimants, perception of their consultative examination experience is central to the program's overall credibility." We agree, and therefore, have also retained this requirement for procedures for evaluating claimant reactions to key providers. SSA's operating instructions, which were developed to provide the State agencies with specific procedures for evaluating claimant reactions relating to §§ 404.1519s(f)(10) and 416.919s(f)(10), require routine surveys of claimants by using various methods (questionnaire, post card, telephone, personal interview) as soon as possible after the consultative examination is completed and before any decision is made on the claim. The purpose of these surveys is to obtain the claimant's opinion on matters such as ease of location of, and physical access to the consultative examination provider's facility; cleanliness of the facility; courtesy and professional conduct; timeliness and duration of the examination; and privacy of the examination.

*Comment:* Another commenter thought that the regulation should be amended to require the State agency to supply the claimant with a copy of the consultative examination report before the State agency interviews the claimant about his or her reaction to a key provider.

*Response:* We do not believe that the regulations should be amended to require the State agency to supply the claimant with a copy of the consultative examination report before the State agency interviews the claimant about his or her reaction to a key provider. SSA's basic policy is not to release a consultative examination report directly to the claimant. SSA has procedures to send the consultative examination report to the claimant's treating source when the claimant authorizes SSA to do so, and also has procedures for disclosure of the consultative examination report to the claimant's treating source without consent when the consultative examination uncovers a potentially lifethreatening situation. The rationale is that the consultative examination report contains information that may prove harmful to the claimant's mental well-being, or which could be easily misinterpreted by the claimant. SSA believes that, when it is necessary to divulge the contents of the consultative examination report, the information in the consultative examination report should be provided directly to the claimant's treating source because the treating source is in the best position to judge, in each individual case, how to explain the information to the claimant. Additionally, in most cases, the report will not have been completed before the State agency interviews the claimant about his or her reaction to a key provider, and even if it were, we believe that knowledge of its contents may jeopardize the claimant's objectivity.

*Comment:* One commenter raised concerns about the requirement of the State agency to orient, train and review the work of new consultative examination providers. This commenter went on to say that this is possible when the number of consultative examination providers is relatively small, but when the range of consultative examination providers is continually expanding to include new treating sources, the burden of training and orienting these potential providers becomes overwhelming. This commenter also thought that this language is unclear and may imply to some readers that the State agency is responsible for medical training of the consultative physician, a responsibility clearly beyond the scope of the State agency.

Two commenters expressed concern that a State could use this requirement to create an obstacle to treating physicians being used as consultative examination sources.

*Response:* The intent of the regulation is to provide new consultative examination providers with information on SSA's program requirements involving consultative examination report content, and not to make the State agency responsible for training the consultative physician in medical techniques, which, we agree, is beyond the scope of the State's responsibility. We have clarified the language in §§ 404.1519s(f)(2) and 416.919s(f)(2) of the final regulations to show that only orientation, training, and review of new consultative examination providers are required. Training or review of medical techniques is not included.

We recognize that the universe of consultative examination providers will continue to expand to include new treating sources as the preferred consultative examination providers. However, we also recognize the unavoidable fact that the State agencies must orient, train, and review their consultative examination providers to ensure that they are conducting proper examinations and are providing complete reports containing the necessary medical evidence.

The State agencies should use a common sense approach towards orientation, training, and review of their consultative examination providers based upon their expected frequency of use. For example, a consultative examination physician or psychologist who is a member of the panel of consultative examination providers that the State agency routinely uses should receive more in-depth training, orientation, and review than a treating source who may only be asked to perform a consultative examination occasionally.

*Comment:* One commenter thought that, to allow the State agency more latitude, this entire section should be a recommendation rather than a mandate.

*Response:* As stated earlier, the Secretary's responsibility for the effective stewardship of SSA's disability programs, coupled with SSA's commitment to manage these programs in a way that will be in the best interest of the public and the trust funds, requires that SSA exercise greater management responsibility for the consultative examination process. Therefore, this section will remain mandatory.

*Comment:* One commenter thought the regulations should contain language that a claimant's failure to raise objections at the time of the consultative examination does not waive objections at reconsideration or at the administrative law judge level. This commenter also thought that there should be a requirement that complaints about any provider (key or not) must be referred to

the State licensing authority responsible for licensing doctors and psychologists. Another commenter stated that where SSA finds inadequate reports from a consultative examination provider, all cases where the provider was used should be reviewed to see if they should be reopened, and, in cases where the claim is still being considered, or where the decision is made not to reopen, the claimant should be informed. The commenter thought this should be done in all cases where a provider is no longer used because of fraud.

*Response:* Although we agree that the claimant's failure to raise objections at the time of the consultative examination does not waive objections at the reconsideration or administrative law judge level, we see no need to include this in the regulations. We see no purpose in referring all complaints about consultative examination providers to the State licensing authority, unless the complaint has something to do with the consultative examination provider's competency to practice. We will refer any question of competency of the physician to the State licensing authority. Where SSA finds inadequate reports from a consultative examination provider, it would be administratively impractical in terms of cost to routinely review all prior cases where that provider was used or to notify the claimant. We would not preclude such review, however. Any case in which there is a question of fraud will be re-reviewed. When a provider is no longer used because of fraud, it would be administratively impractical to routinely review all prior cases when that provider was used.

*Sections 404.1519/416.919t Consultative Examination Oversight*

*Comment:* One commenter thought the original intent of these regulations was to monitor the larger State agencies and wanted to know if this was still the situation or would all State agencies be open to consultative examination monitoring by an independent medical source. This commenter also questioned the cost effectiveness of hiring an independent third-party medical specialist. Another commenter wanted to know who the independent medical specialists under contract with SSA were and if the State agency is required to participate in their recruitment. This commenter was also concerned about related budget considerations. Finally, one commenter recommended that such reviews not be mandatory.

*Response:* Complete and reliable medical evidence is a key element in making accurate disability decisions. We spend considerable sums annually to obtain consultative examinations. Because of these expenditures and the need to obtain accurate and complete reports, it is imperative that the consultative examinations and the accompanying reports be of the highest quality. Therefore, it is our intent that all State agencies be open to monitoring, including reviews by independent medical specialists under contract with SSA, as the need arises. We believe these contractors will demonstrate their value and cost effectiveness in providing us an objective and credible evaluation of a consultative examination provider's practices and competence, which in turn will help ensure the integrity and public confidence in SSA's disability programs.

The identities of the contractors will be determined through appropriate procedures on an "as needed" basis. The contractors could come from various sources such as insurance companies, the American Medical Association, and the American Psychiatric Association. State agency staff may be asked for their advice in the selection of contractors and in related budget considerations.

We agree with the commenter who indicated that independent reviews should not be made mandatory and we have reflected this change in §§ 404.1519t(a) and 416.919t(a).

*Comment:* One commenter thought that comprehensive reviews of the State's consultative examination management and onsite visits of consultative examination providers should be done only at the invitation of State agency staff.

*Response:* SSA has the ultimate responsibility for oversight of the consultative examination process. Also, as stated earlier, Congress and the General Accounting Office have called for more comprehensive, specific, and uniform consultative examination oversight. In order to carry out its oversight responsibilities, SSA cannot limit itself to oversight activities solely at the invitation of the State agencies. SSA will undertake comprehensive reviews of State agencies periodically and reserves the right to conduct reviews at such times as necessary to assure compliance with pertinent Federal statutes and regulations.

*Comment:* One commenter questioned the significance of including a regional physician in the State agency review process since the commenter felt that the regional physician could only comment on the report format, deficiencies, or how the examination was conducted. Several commenters also thought that the travel and contracting costs for the regional physician would be considerable. Another commenter thought that the requirements for regional office reviews of the State agencies may adversely affect the relationship between State agency medical staff and the consultative examination source as well as constitute a drain on an already strained regional medical consultant time resource.

*Response:* We agree with the commenters on the issue of regional physician participation and are therefore, deleting the requirement for participation by the regional medical advisor or a regional physician delegate from the regulation.

We do not believe the State agency review requirements we are imposing will adversely affect the relationship between State agency medical staff and the consultative examination providers. SSA and the State agencies are mindful of the need to preserve and foster a cooperative relationship with the medical community.

*Sections 404.1519u/416.919u Direct Purchase of Medical Services Across State Lines*

*Comment:* Several commenters stated that changing our longstanding practice of using the fee schedule of a neighboring State, as the Notice of Proposed Rulemaking provided, when it becomes necessary to use a source in that State for a consultative examination, will create medical relations problems as well as greater cost and delay. According to the commenter, these medical relations problems could occur, for example, when the consultative examination source's payment in the neighboring State's fee schedule is higher than the requesting State's fee schedule.

One commenter also indicated that this is not an aspect of program administration that seriously affects our relationship with the public and that internal program directives and understandings among the States should suffice.

*Response:* We agree with the commenters on both points and, therefore, have decided to remove this section from the regulation. States will continue to follow current operating policy in these situations.

*Sections 404.1520/416.920 Evaluation of Disability*

*Comment:* One commenter indicated that mention should be made here of our policy on multiple not severe impairments or a cross-reference to the section.

*Response:* We agree with the commenter and have amended §§ 404.1520 and 416.920 to include our policy on multiple not severe impairments.

*Sections 404.1527/416.927 Evaluating Medical Opinions About Your Impairment(s) or Disability*

*Comment:* One commenter stated that proposed §§ 404.1527 and 416.927 were beyond the scope of Public Law 98–460 and that we did not have the authority to publish these regulations. He argued that section 9 of Public Law 98–460 required the Secretary to promulgate regulations addressing the standards for consultative examinations and did not provide authority for promulgating regulations on other issues, such as treating source opinions. The commenter suggested that §§ 404.1527 and 416.927 be withdrawn.

*Response:* This section has not been withdrawn as suggested by the commenter. We agree that section 9 of Public Law 98–460, which required the Secretary to issue regulations addressing standards for consultative examinations, does not provide specific authority for the issuance of this provision. However, the Secretary has general authority, under section 205(a) of the Act, to promulgate regulations on issues consistent with establishing the right to benefits under the Act. Further, section 221(k) of the Act requires the Secretary to establish, by regulations, uniform standards to be applied to all levels of determination, review, and adjudication in determining whether individuals are "disabled" as defined under the Act.

*Comment:* Several commenters argued that our proposed policy in §§ 404.1527 (b) and (c) and 416.927 (b) and (c) to give "conclusive" weight only to treating source opinions that were "fully supported by medically acceptable clinical and laboratory diagnostic techniques and * * * not inconsistent with the other substantial medical evidence of record" was unfair and contrary to the view of many circuits. Several commenters pointed out that under the proposed standard such opinions could be viewed as superfluous, since they would follow inevitably from the known facts. Some commenters thought that the proposed standard overlooked the fundamental principle common to decisions in their respective circuits: That treating sources have special knowledge and understanding of their patients by virtue of the treatment relationship. This special knowledge is not necessarily evident in the objective medical findings and cannot necessarily be verified by single examinations, such as consultations, or by simply reviewing medical records. Some commenters thought that the proposed rules would mislead adjudicators into overlooking treating source opinions about their patients' symptomatology. Some thought that the proposed rules would permit us to disregard most treating source opinions. Many of the commenters pointed out that the decisions of their respective circuits required us to adopt certain treating source opinions unless we could overcome the opinions with other substantial evidence.

In addition, some commenters thought that the language of the proposed rule was unclear. They questioned what we meant by the term "fully supported" and how we would determine whether an opinion was fully supported. One commenter expressed a belief that the view of the Second Circuit was based in part on a principle that adjudicators are not experts and are, therefore, not in a position to evaluate whether treating source opinions are supported. Commenters from other circuits generally conceded that opinions were subject to a standard of support and that we were the ultimate finders of the facts. Commenters from the Sixth Circuit stated that the standards for support in their circuit were "sufficient medical data" or "consistent with clinical or laboratory findings." A commenter from the Seventh Circuit stated that the view in that circuit was "fully supported by medically acceptable clinical and laboratory diagnostic techniques and there exists no factual evidence of bias on the part of the treating physician." A commenter from the Tenth Circuit stated that the standard should be that "a treating physician's opinion might be rejected if it is brief, conclusory, and unsupported by medical evidence." However, irrespective of the standards in their individual circuits, all of the commenters were concerned that our proposed rules did not require adjudicators to articulate reasons for rejecting any treating source opinions.

*Response:* We believe that we have tried to be responsive to most of the comments we have received on this subject, and that we have crafted a regulation that is fair, balanced, and takes into account the concerns raised by the commenters and by the courts.

As stated above, while the circuit courts vary somewhat in their formulation of a standard on how treating source evidence is to be considered, the majority of the circuit courts generally agree on two basic principles. First, they agree that treating source evidence tends to have greater value by virtue of the treating source's relationship with the claimant, because this relationship allows the treating source to have the best idea of how the physical or mental impairment has affected the claimant. Second, they agree that if the Secretary decides to reject such an opinion, he should provide the claimant with good reasons for doing so. We have been guided by these principles in our development of the final rule.

When we decide claims for disability benefits, we have a responsibility (1) to be impartial; (2) to provide each claimant with the fairest possible assessment of the evidence, and even to assist each claimant in developing the evidence when necessary; and (3) to protect the public interest by providing benefits only to those claimants who are truly disabled.

We have revised our regulations to reflect these responsibilities and to address the concerns expressed by the commenters. Consistent with our responsibility to make correct determinations and decisions, the final rules provide that unsupported opinions cannot be determinative. However, we will never disregard a treating source's opinion, and we will make an effort to obtain evidence from the source in support of the opinion.

Under the law, we are the ultimate deciders of each case. We have, however, indicated when a treating source's opinion will be controlling. When it is not controlling, we have provided several rules which recognize the special status of treating sources, and which accord their opinions greater weight—even when they are unsupported or contradicted—than such opinions would otherwise be entitled to if they came from a nontreating source. Moreover, consistent with the concerns raised by the courts and in public comments, we have required our adjudicators to provide good reasons in their notices of determination or decision whenever they do not find a treating source's medical opinion as to the nature or extent of an impairment to be controlling.

*Comment:* Some commenters were concerned that the proposed language of §§ 404.1527(b) and (c), and 416.927(b) and (c) permitted us to discount a treating source's apparently unsupported opinion without recontacting the source, and that the rules placed highly restrictive conditions on obtaining additional information from treating sources.

*Response:* To the contrary, recontact with treating sources to complete the case record and to resolve any

inconsistencies in the evidence is one of the principal provisions of this set of rules. See §§ 404.1512(d) and 416.912(d) of these final regulations. Far from being restrictive, the intent of these rules is to require such contacts.

*Comment:* One commenter thought that the language of §§ 404.1527(b) and (c), and 416.927(b) and (c) would encourage the inefficient and costly use of consultative examinations.

*Response:* This was not our intent. Our revisions to the regulations at §§ 404.1519a and 416.919a clarify when a consultative examination will be needed to complete a case record or to help resolve any inconsistencies. If there is sufficient evidence in the case record to decide all of the issues, we will not obtain a consultative examination.

*Comment:* Several commenters expressed concern that, because our proposed definition of treating source in §§ 404.1502 and 416.902 seemed to exclude sources who had treated claimants in the past but who no longer maintained treatment relationships, many source opinions that should be deserving of special weight would not be entitled to such weight under proposed §§ 404.1527 and 416.927.

*Response:* We did not intend to exclude sources who had provided treatment in the past. We have, therefore, revised our definition in §§ 404.1502 and 416.902 to include former treating sources, and it should be understood that the provisions of §§ 404.1527 and 416.927 will apply to opinions from these sources.

*Comment:* Commenters from the Second, Sixth and Tenth Federal Judicial Circuits expressed concern about the phrase "some extra weight" given to the supported opinions of treating sources when resolving an inconsistency with the evidence of record in proposed §§ 404.1527(d) and 416.927(d), stating a belief that the standard implied by the term was inconsistent with the views of their respective circuits. One commenter stated that the standard was contrary to the views of all relevant circuits. Other commenters stated that the phrase was unclear and that it would be difficult to apply.

*Response:* The term "some extra weight" was actually taken from a case on treating source evidence in the Second Circuit, *Schisler* v. *Heckler*, 787 F.2d 76, 81, (2d Cir., 1986). *See also*, *Schisler* v. *Bowen*, 851 F.2d 43, (2d Cir., 1988). However, we agree with the commenters that the term "some extra weight" may be unclear. We have, therefore, clarified the regulations by deleting the phrase and adding more detail to the rules.

We believe that the revisions make clear that our policy provides a very specific and detailed process for evaluating medical opinions, a process that takes into account and, in large measure, was shaped by, the kinds of concerns raised by the circuit courts. If a particular treating source is an individual who is more familiar with a claimant's medical condition, we will always give special deference to the source's opinions about the nature and degree of a claimant's impairment(s). If such an opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record, we will give it controlling weight. However, a treating source's opinion does not have to be consistent with other substantial evidence, and it does not necessarily have to be supported by objective evidence in order to receive some special deference.

We will give greater weight to a well-supported medical opinion from a treating source than to an equally well-supported medical opinion from another source that is inconsistent with the treating source's opinion. Moreover, in recognition of the special kind of knowledge and understanding of a claimant's condition that only a treating source can have, we will also give greater weight to a treating source's medical opinion that is not well-supported than we would otherwise have given it if it had come from a nontreating source. We will also never reject a treating source's opinion simply because it is not well-supported or because it conflicts with other substantial evidence. We will try to recontact the source to obtain additional evidence—which may consist of nothing more than a more detailed explanation—in support of the opinion or to resolve the conflict.

*Comment:* One commenter thought that the example we proposed in §§ 404.1527(d) and 416.927(d) which describes a case involving arthritis of the shoulder presumed that a treating source has the burden of justifying his or her opinion while a consultative examiner need not give any such justification.

*Response:* We certainly did not intend to give the impression arrived at by the commenter, but agree that the example could be misinterpreted. We have therefore deleted the example and provided more detailed rules. In general, we will not give great weight to any opinion, including a treating source's, opinion, unless we can understand the basis for the opinion, either by reviewing the complete case record or by obtaining an explanation from the medical source who offered the opinion.

*Comment:* A significant number of the commenters took issue with the statement in proposed §§ 404.1527(e) and 416.927(e) that we would "not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability." Some commenters thought that this meant we would disregard any treating source opinions that were not couched in the exact terminology of the law or regulations; others thought that the provision meant that we would never give any extra weight to such opinions. In support of their interpretation of the language, several commenters pointed to the second example at the end of the paragraph.

*Response:* We agree with the commenters that the proposed language could be misinterpreted, and have therefore deleted the examples and replaced the entire section with new §§ 404.1527(e) and 416.927(e). We did not intend to suggest a policy that would permit adjudicators to ignore or reject any opinion evidence on the grounds that the opinions used the wrong terminology.

Our final rule affirms that the ultimate determination of disability is the Secretary's responsibility, and clarifies our policy on how we consider opinions about "disability," "inability to work," and other issues reserved to the Secretary, including determinations about meeting or equalling the Listings, residual functional capacity, the ability of claimants to perform their past relevant work, and the ability of claimants to adjust to other work considering their residual functional capacity together with their age, education, and work experience. However, in response to the comments, we have also added language to §§ 404.1527(e)(2) and 416.927(e)(2) to indicate that we will never disregard an opinion about an issue that is reserved to the Secretary. Furthermore, as we will do in any case in which we have a treating source opinion that is not otherwise controlling and that requires further explanation, we will attempt to recontact the treating source who offers an opinion on any of these issues for additional evidence or explanation whenever necessary. We will always provide an explanation in our notice of determination or decision of our reason why we have not adopted a treating source's opinion.

*Comment:* One commenter noted that §§ 404.1527(e) and 416.927(e) addressed opinions about meeting the Listings but

failed to acknowledge our own provisions for evaluating equivalencies.

*Response:* The commenter was correct. We have included equivalency in our revision of §§ 404.1527(e) and 416.927(e).

*Comment:* Two commenters argued, in identical language, that the proposed rules in §§ 404.1527(e) and 416.927(e) would permit us simply to disregard a treating source's opinion about whether a claimant's impairment(s) meets or equals the Listings and stated that the proposal "ignores one of the most important sources of expert testimony" on whether a claimant's impairments are equivalent to the requirements for any listed impairment. A third commenter submitted what appeared to be a paraphrase of the comment submitted by the other two commenters. All three urged that the provision be withdrawn.

*Response:* As we have indicated in previous responses, it was not our intention to create a rule that would permit adjudicators to "disregard" or "ignore" any treating source opinions for any reason. We have revised the language of §§ 404.1527(e) and 416.927(e) to make this clear.

However, we did intend to restate in the regulations our policy that determinations of meeting the Listings and equivalency are reserved to the Secretary. We agree with the commenters that meeting the Listings is more a question of medical fact than a question of medical opinion. In most instances, the requirements of listed impairments are objective, and whether an individual manifests these requirements is simply a matter of documentation. To the extent that treating sources are usually the best sources of this documentation, we look to them for evidence with which we can determine whether an individual's impairment meets the Listings, and such evidence can have great weight in our determination. When a treating source provides an opinion based on evidence that demonstrates that an individual has an impairment that meets a listing, we will ordinarily adopt the opinion unless we have a good reason to doubt it. However, since meeting the Listings is an ultimate conclusion about disability, it is our responsibility and we cannot give any special weight to treating source or any other medical source opinion about whether an individual's impairment meets the requirements of the Listings of Impairments.

We do not agree with the comment which suggests that the concept of equivalency is strictly medical and, therefore, within the expertise of treating sources. When we address equivalency as a "medical consideration" in §§ 404.1526 and 416.926, and as a determination "based * * * on medical facts alone" in §§ 404.1520(e) and 416.920(e), we mean to distinguish Listings determinations from determinations which consider the *nonmedical* factors of past work experience, age, and education. In fact, determinations of equivalency are not solely medical; they also require familiarity with our regulations, with which most physicians lack expertise. They involve findings not only about the nature and severity of medical impairments, including associated signs, symptoms and laboratory findings, but also about whether the findings comport with a legal standard of severity that is not generally understood by most physicians who are not employed by the Social Security Administration; Social Security's concept of "equivalency" is not taught in medical school, and it is not part of the normal practice of medicine.

We do consider treating sources to be important sources of expert testimony on the nature and severity of a claimant's impairments. Moreover, we will always carefully consider treating source opinions about whether a claimant's impairment(s) meets or equals the requirements of the Listings. However, although treating source opinions that an impairment(s) meets or equals the Listings may be considered to be important expert testimony, we do not consider them to be controlling. Such an opinion, if controlling, would amount to a determination that a claimant is under a disability. Under the law, only the State agency or the Secretary can make that determination. Moreover, as the first two commenters pointed out in a separate comment, "[v]ery few treating physicians are experts at the complexities of the Social Security disability standards."

When a treating source offers an opinion that a claimant's impairment or impairments are equivalent in severity to an impairment in the Listings, we will evaluate all of the evidence to determine if it supports that opinion. If the evidence does not support the opinion and we cannot ascertain from the record the basis of the treating source's opinion, we will make every reasonable effort to recontact the source for clarification of the reasons for the opinion. Also, if after the recontact we do not agree with the opinion, we will provide an explanation of our reasons for not adopting the opinion in our notice of determination or decision, as we will do whenever we do not give a treating source's opinion controlling weight. When we weigh the opinion, we will apply all of the applicable rules in §§ 404.1527(d) and 416.927(d), which may require us to give deference to treating source opinions on issues which relate to the ultimate conclusion of whether a claimant's impairment(s) is equivalent to a listed impairment, such as issues about diagnosis, symptoms, and prognosis; but we will not give special weight to any opinion on the ultimate conclusion regarding whether the impairment(s) is equivalent.

*Comment:* In connection with Example 2 in proposed §§ 404.1527(e) and 416.927(e), two commenters questioned the propriety of entrusting the responsibility for assessing residual functional capacity to State agency physicians and psychologists. Both suggested that treating sources should be asked to provide the assessments; one requested that we amend our rules to require State agencies to obtain such assessments from treating sources whenever appropriate. Both commenters indicated that residual functional capacity assessments made by nonexamining medical sources or other personnel are given little or no weight by the courts. One of the commenters also questioned how assessments of residual functional capacity made by disability hearing officers, administrative law judges, and the Appeals Council, all of whom are nonmedical adjudicators, could override an opinion about a claimant's work capabilities submitted by a treating source.

*Response:* We have deleted both of the examples we proposed and have revised and expanded the text of the rules.

Our regulations contain provisions describing two kinds of assessments of what a person can do despite the presence of a severe impairment(s). One assessment, described in §§ 404.1513 (b) and (c) and 416.913 (b) and (c), is the "statement about what you can still do" submitted by medical sources, including treating sources and consulting examiners. Medical sources offer these statements based upon their own records and examinations to express opinions about claimants' abilities to perform work-related activities on a sustained basis. Although we will not consider reports from medical sources to be incomplete without such statements, these final rules provide that we will always request the statements.

The second kind of assessment is the residual functional capacity assessment. "Residual functional capacity assessment" is a term of art in §§ 404.1545 and 416.945 and 404.1546 and 416.946 intended to describe the

ultimate finding about a person's ability to do work-related activities. It is a determination made by an adjudicator based upon his or her review of the entire case record. Residual functional capacity assessments are based upon consideration of all relevant evidence in the case record, including medical evidence of which an individual treating source may not be aware, and relevant nonmedical evidence, such as observations of lay witnesses of a claimant's apparent symptomatology, a claimant's own statement of what he or she is able or unable to do, and many other factors that could help an adjudicator determine the most reasonable findings in light of all of the evidence.

Thus, a medical source's statement about what an individual can still do is opinion evidence that an adjudicator considers together with all of the other evidence when assessing a claimant's residual functional capacity. However, a State agency medical or psychological consultant's assessment constitutes the findings of an adjudicator based on all the evidence in file and cannot be considered evidence by the State agency. It cannot be weighed against the opinion of a medical source in the case file at the initial and reconsideration levels, since the State agency medical or psychological consultant is participating in the determination at those levels.

The administrative determination of a claimant's residual functional capacity may be the most critical finding contributing to the final decision. We do ask treating sources to provide us with their opinions about their patients' functional abilities based upon the information they are competent to assess, their own knowledge of their patients, and we weigh these opinions carefully. However, we would be abrogating our responsibility under the law to decide cases independently if we were to adopt the suggestion that we ask treating sources to make the ultimate determination of residual functional capacity for us. The State agency medical or psychological consultant, the administrative law judge, or the Appeals Council is responsible for assessing residual functional capacity.

We follow a special procedure at the hearing and appeals levels. Since administrative law judges consider the issues that are before them *de novo,* that is, as though the cases were being decided for the first time, findings made by State agency medical or psychological consultants are not binding on them. Because State agency medical or psychological consultants are highly qualified physicians or psychologists and are experts on our program, administrative law judges may not ignore their findings; instead, we require administrative law judges to give consideration to these findings and to evaluate them using the same rules as apply to the evaluation of opinions of nonexamining medical sources. Of course, since administrative law judges decide the issues of disability *de novo,* they will not consider any State agency findings about whether an individual is or is not disabled, except for opinions about whether the individual has an impairment(s) equivalent to any listed impairment as required by §§ 404.1526 and 416.926. The same rules apply to the Appeals Council when it issues a decision. We have added new §§ 404.1512(b)(6) and 416.912(b)(6) and a new paragraph (f) to §§ 404.1527 and 416.927 to explain these longstanding policies.

We agree with the commenters that it is probably true that the courts usually give less weight to the opinions of nonexamining sources than to the opinions of treating or other examining medical sources. In fact, these final regulations take this into account. The regulations provide progressively less rigorous tests for weighing opinions as the ties between the medical source and the claimant become progressively stronger. We generally give the most weight to the opinions of treating sources who have known their patients for long periods or who otherwise have expert knowledge of their patients that cannot be obtained through single examinations or a brief relationship. The opinions of physicians or psychologists who do not have a treatment relationship with the claimant are weighed by stricter standards, based to a greater degree on medical evidence, qualifications, and explanations for the opinions than are required of treating sources or other examining sources. The opinions of nonexamining sources can be given weight only insofar as they are supported by evidence in the case record. This is not to say that opinions from nonexamining sources cannot outweigh the opinions of treating sources; rather, that we require adjudicators to have solid, well-articulated reasons when they determine that the opinions of nonexamining sources are entitled to greater weight than the opinions of treating sources.

*Sections 404.1545/416.945 Your Residual Functional Capacity*

No comments were directed to this section.

*Sections 404.1546/416.946 Responsibility for Assessing and Determining Residual Functional Capacity*

*Comment:* Several commenters suggested amending this section to be consistent with work simplification initiatives, to have the residual functional capacity assessment prepared by a disability examiner for review and approval by the State agency medical consultant. One commenter said that evidence from workshops and psychologists should be recognized and included in preparing residual functional capacity assessments instead of restricting it to medical evidence.

*Response:* The work simplification initiative referred to in the comment has been discontinued. There will be no change in the regulatory language because the State agency medical consultant is the person responsible for assessing residual functional capacity. A residual functional capacity assessment is based on all of the medical and other relevant evidence included in an individual's case file. Therefore, if evidence from a workshop or psychologist is in the individual's case file, it will be considered along with the other evidence of record. Observations of the individual's work limitations in addition to those usually made during formal medical examinations may also be used.

*Sections 404.1593/416.993 Medical Evidence in Continuing Disability Review Cases*

*Comment:* One commenter stated that this section should be revised to be consistent with other related sections of the regulations. This same commenter stated that the termination of benefits should not occur if a beneficiary unsuccessfully attempts to obtain reports from treating sources.

*Response:* The rules for development of medical evidence that apply in determining initial disability also apply to that portion of the continuing disability review which involves consideration of the individual's current impairments. We have revised this section to be consistent with §§ 404.1512 and 416.912 of the regulations. We make special efforts to ensure against ceasing benefits solely because the beneficiary is unable to furnish evidence from a source for reasons beyond the beneficiary's control.

**Regulatory Procedures**

*Executive Order 12291*

These rules affect the disability programs under title II and title XVI of the Social Security Act. In addition, to the extent that Medicare and Medicaid eligibility are based on title II and title XVI eligibility, these rules also affect the Medicare and Medicaid programs.

These regulations have been reviewed under Executive Order 12291. While implementation of these regulations will involve costs to State Disability Determination Services, these costs do not exceed the dollar thresholds that meet any of the criteria for a major rule. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect disability claimants under title II and title XVI of the Act.

*Paperwork Reduction Act*

These regulations contain information collection requirements in §§ 404.1512 (b), 404.1513 (b) and (c), 404.1519n(c), 404.1593 (b) and (c), 416.912(b), 416.913 (b) and (c), 416.919n(c), and 416.993 (b) and (c).

As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of the proposed rules to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on these information collections were asked to direct them to the Commissioner of Social Security and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

(Catalog of Federal Domestic Program Nos. 93.802, Social Security Disability Insurance; 93.807, Supplemental Security Income Program)

**List of Subjects**

*20 CFR Part 404*

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: March 14, 1991.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approval: April 25, 1991.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, parts 404 and 416 of chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

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

20 CFR part 404, subpart P is amended as follows:

### Subpart P—Determining Disability and Blindness

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

**Authority:** Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat 473; secs. 2(d) (2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2.–3. Section 404.1502 is revised to read as follows:

**§ 404.1502 General definitions and terms for this subpart.**

As used in the subpart—

*Medical sources* refers to treating sources, sources of record, and consultative examiners for us. See § 404.1513.

*Secretary* means the Secretary of Health and Human Services.

*Source of record* means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have or did not have an ongoing treatment relationship with you.

*State agency* means that agency of a State which has been designated by the State to carry out the disability or blindness determination function.

*Treating source* means your own physician or psychologist who has provided you with medical treatment or evaluation and who has or has had an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with a physician or psychologist when the medical evidence establishes that you see or have seen the physician or psychologist with a frequency consistent with accepted medical practice for the type of treatment and evaluation required for your medical condition(s). We may consider a physician or psychologist who has treated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment is typical for your condition(s). We will not consider a physician or psychologist to be your treating physician if your relationship with the physician or psychologist is not based on your need for treatment, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the physician or psychologist to be a consulting physician or psychologist.

*We* or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination.

*You* refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

4. Section 404.1503a is added to read as follows:

**§ 404.1503a Program integrity.**

We will not use in our program any individual or entity, except to provide existing medical evidence, who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; whose license to provide health care services is currently revoked or suspended by any State licensing authority pursuant to adequate due process procedures for reasons bearing on professional competence, professional conduct, or financial integrity; or who, until a final determination is made, has surrendered such a license while formal disciplinary proceedings involving professional conduct are pending. By individual or entity we mean a medical or psychological consultant, consultative examination provider, or diagnostic test facility. Also see §§ 404.1519 and 404.1519g(b).

**§ 404.1508 [Amended]**

5. Section 404.1508 is amended by adding the cross-reference "(see § 404.1527)" at the end of the penultimate sentence before the period.

6. Section 404.1512 is revised to read as follows:

**§ 404.1512 Evidence of your impairment.**

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other

evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are blind or disabled, its effect on your ability to work on a sustained basis. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by "evidence."* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. This includes, but is not limited to:

(1) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 404.1528 (b) and (c);

(2) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(3) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(4) Information from other sources, as described in § 404.1513(e);

(5) Decisions by any governmental or nongovernmental agency about whether you are disabled or blind; and

(6) At the administrative law judge and Appeals Council levels, certain findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical advisors based on their review of the evidence in your case record. See § 404.1527(f) (2) and (3).

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. If we ask you, you must also provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work. In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

(d) *Our responsibility.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports.

(1) "Every reasonable effort" means that we will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one followup request to obtain the medical evidence necessary to make a determination. The medical source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(2) By "complete medical history," we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe your disability began earlier. If applicable, we will develop your complete medical history for the 12-month period prior to (1) the month you were last insured for disability insurance benefits (see § 404.130), (2) the month ending the 7-year period you may have to establish your disability and you are applying for widow's or widower's benefits based on disability (see § 404.335(c)(1)), or (3) the month you attain age 22 and you are applying for child's benefits based on disability (see § 404.350(e)).

(e) *Recontacting medical sources.* When the evidence we receive from your treating physician or psychologist or other medical source is inadequate for us to determine whether you are disabled, we will need additional information to reach a determination or a decision. To obtain the information, we will take the following actions.

(1) We will first recontact your treating physician or psychologist or other medical source to determine whether the additional information we need is readily available. We will seek additional evidence or clarification from your medical source when the report from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques. We may do this by requesting copies of your medical source's records, a new report, or a more detailed report from your medical source, including your treating source, or by telephoning your medical source. In every instance where medical evidence is obtained over the telephone, the telephone report will be sent to the source for review, signature and return.

(2) We may not seek additional evidence or clarification from a medical source when we know from past experience that the source either cannot or will not provide the necessary findings.

(f) *Need for consultative examination.* If the information we need is not readily available from the records of your medical treatment source, or we are unable to seek clarification from your medical source, we will ask you to attend one or more consultative examinations at our expense. See §§ 404.1517 through 404.1519t for the rules governing the consultative examination process. Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources. However, in some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. We will not evaluate this evidence until we have made every reasonable effort to obtain evidence from your medical sources.

7. Section 404.1513 is amended by revising paragraph (b)(6) and paragraph (c) and the introductory text of paragraph (b) is republished to read as follows:

**§ 404.1513 Medical evidence of your impairment.**

* * * * *

(b) *Medical reports.* Medical reports should include—

* * * * *

(6) A statement about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). Although we will request a medical source statement about what you can still do despite your impairment(s), the lack of the medical source statement will not make the report incomplete. See § 404.1527.

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed below. See §§ 404.1527 and 404.1545(c).

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

* * * * *

8. Section 404.1517 is revised to read as follows:

**§ 404.1517 Consultative examination at our expense.**

If your medical sources cannot or will not give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to have one or more physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without our advance approval. If we arrange for the examination or test, we will give you reasonable notice of the date, time, and place the examination or test will be given, and the name of the person or facility who will do it. We will also give the examiner any necessary background information about your condition.

9. New §§ 404.1519 through 404.1519t and the accompanying center headings are added to read as follows:

**Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations**

**§ 404.1519 The consultative examination.**

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source, including a pediatrician when appropriate. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of §§ 404.1519a through 404.1519f. Selection of the source for the examination will be consistent with the provisions of § 404.1503a and §§ 404.1519g through 404.1519j. The rules and procedures for requesting consultative examinations set forth in §§ 404.1519a and 404.1519b are applicable at the reconsideration and hearing levels of review, as well as the initial level of determination.

**§ 404.1519a When we will purchase a consultative examination and how we will use it.**

(a) (1) *General.* The decision to purchase a consultative examination for you will be made after we have given full consideration to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis) is readily available from the records of your medical sources. See § 404.1512 for the procedures we will follow to obtain evidence from your medical sources. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. Other situations, including but not limited to the situations listed below, will normally require a consultative examination:

(1) The additional evidence needed is not contained in the records of your medical sources;

(2) The evidence that may have been available from your treating or other medical sources cannot be obtained for reasons beyond your control, such as death or noncooperation of a medical source;

(3) Highly technical or specialized medical evidence that we need is not available from your treating or other medical sources;

(4) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved, and we are unable to do so by recontacting your medical source; or

(5) There is an indication of a change in your condition that is likely to affect your ability to work, but the current severity of your impairment is not established.

**§ 404.1519b When we will not purchase a consultative examination.**

We will not purchase a consultative examination in situations including, but not limited to, the following situations:

(a) In period of disability and disability insurance benefit claims, when you do not meet the insured status requirement in the calendar quarter you allege you became disabled or later and there is no possibility of establishing an earlier onset;

(b) In claims for widow's or widower's benefits based on disability, when your alleged month of disability is after the end of the 7-year period specified in § 404.335(c)(1) and there is no possibility of establishing an earlier onset date, or when the 7-year period expired in the past and there is no possibility of establishing an onset date prior to the date the 7-year period expired;

(c) In disability insurance benefit claims, when your insured status expired in the past and there is no possibility of establishing an onset date prior to the date your insured status expired;

(d) When any issues about your actual performance of substantial gainful activity or gainful activity have not been resolved;

(e) In claims for child's benefits based on disability, when it is determined that your alleged disability did not begin before the month you attained age 22, and there is no possibility of establishing an onset date earlier than the month in which you attained age 22;

(f) In claims for child's benefits based on disability that are filed concurrently with the insured individual's claim and entitlement cannot be established for the insured individual;

(g) In claims for child's benefits based on disability where entitlement is precluded based on other nondisability factors.

**Standards for the Type of Referral and for Report Content**

**§ 404.1519f Type of purchased examinations.**

We will purchase only the specific examinations and tests we need to make a determination in your claim. For example, we will not authorize a comprehensive medical examination when the only evidence we need is a special test, such as an X-ray, blood studies, or an electrocardiogram.

**§ 404.1519g Who we will select to perform a consultative examination.**

(a) We will purchase a consultative examination only from a qualified medical source. The medical source may be your own physician or psychologist, or another source. If you are a child, the medical source we choose may be a pediatrician. For a more complete list of medical sources, see § 404.1513(a).

(b) By "qualified," we mean that the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test we will request; the medical source must not be barred from participation in our programs under the provisions of § 404.1503a. The medical source must also have the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

(c) The physician or psychologist we choose may use support staff to help perform the consultative examination. Any such support staff (e.g., X-ray technician, nurse) must meet appropriate licensing or certification requirements of the State. See § 404.1503a.

**§ 404.1519h Your treating physician or psychologist.**

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating physician or psychologist will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

**§ 404.1519i Other sources for consultative examinations.**

We will use a source other than your treating physician or psychologist for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating physician or psychologist prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating physician or psychologist;

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference;

(d) We know from prior experience that your treating physician or psychologist may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

**§ 404.1519j Objections to the designated physician or psychologist.**

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be that the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: the presence of a language barrier, the physician's or psychologist's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the physician or psychologist had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is because a physician or psychologist allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 404.1519s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. We will handle any objection to use of the substitute physician or psychologist in the same manner. However, if we had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conformed to our guidelines, we will not change your examination.

**§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.**

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests such as pulmonary function studies, electrocardiograms, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic.

(a) The rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 404.1624 and 404.1626.

(b) If a physician's bill or a request for payment for a physician's services includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the independent laboratory or the rate of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping a specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rate of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rate of payment it uses. The State shall also be responsible for monitoring and overseeing the rate of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

**§ 404.1519m Diagnostic tests or procedures.**

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating physician or psychologist or other medical source and will use the results to help us evaluate impairment severity or prognosis. However, we will not order diagnostic tests or procedures that involve significant risk to you, such as myelograms, arteriograms, or cardiac catheterizations for the evaluation of disability under the Social Security program. Also, a State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. The responsibility for deciding whether to perform the examination rests with the consultative examining physician or psychologist.

**§ 404.1519n Informing the examining physician or psychologist of examination scheduling, report content, and signature requirements.**

The physicians or psychologists who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). We will fully inform consulting physicians or psychologists at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician or psychologist to take a case history and perform the examination, including any needed tests. The following minimum scheduling intervals (i.e., time set aside for the individual, not the actual duration of the consultative examination) should be used.

(1) Comprehensive general medical examination—at least 30 minutes;

(2) Comprehensive musculoskeletal or neurological examination—at least 20 minutes;

(3) Comprehensive psychiatric examination—at least 40 minutes;

(4) Psychological examination—at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(5) All others—at least 30 minutes, or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may require longer scheduling intervals depending on the circumstances in a particular situation. We also recognize that these minimum intervals may have to be adjusted to allow for those claimants who do not attend their scheduled examination. The purpose of these minimum scheduling timeframes is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations (through their normal consultative examination oversight activities) to ensure that any overscheduling is avoided, as overscheduling may lead to examinations that are not thorough.

(b) *Report content.* The reported results of your medical history, examination, requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, and duration of the impairment, and residual functional capacity. The report should reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) *Elements of a complete consultative examination.* A complete consultative examination is one which involves all the elements of a standard examination in the applicable medical specialty. When the report of a complete consultative examination is involved, the report should include the following elements:

(1) Your major or chief complaint(s);

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s);

(3) A description, and disposition, of pertinent "positive" and "negative" detailed findings based on the history, examination and laboratory tests related to the major complaint(s), and any other abnormalities or lack thereof reported or found during examination or laboratory testing;

(4) The results of laboratory and other tests (e.g., X-rays) performed according to the requirements stated in the Listing of Impairments (see appendix 1 of this subpart P);

(5) The diagnosis and prognosis for your impairment(s);

(6) A statement about what you can still do despite your impairment(s), unless the claim is based on statutory blindness. This statement should describe the opinion of the consultative physician or psychologist about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the consultative physician or psychologist about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting; and

(7) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(d) *When a complete consultative examination is not required.* When the evidence we need does not require a complete consultative examination (for example, we need only a specific laboratory test result to complete the record), we may not require a report containing all of the elements in paragraph (c).

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the examining physician or psychologist on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a physician or psychologist or the physician's or psychologist's signature entered by any other person is not acceptable.

**§ 404.1519o When a properly signed consultative examination report has not been received.**

If a consultative examination report is received unsigned or improperly signed we will take the following action.

(a) *When we will make determinations and decisions without a properly signed report.* We will make a determination or decision in the circumstances specified in paragraphs (a)(1) and (a)(2) of this section without waiting for a properly signed consultative examination report. After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the physician or psychologist

who performed the original consultative examination has died.

(1) Continuous period of disability allowance with an onset date as alleged or earlier than alleged; or

(2) Continuance of disability.

(b) *When we will not make determinations and decisions without a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the determinations or decisions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section. When we need a properly signed consultative examination report to make these determinations or decisions, we must obtain such a report. If the signature of the physician or psychologist who performed the original examination cannot be obtained because the physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Allowance of a period of disability which has ended; or

(4) Allowance with an onset date later than alleged.

**§ 404.1519p Reviewing reports of consultative examinations.**

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider the following factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses;

(2) Whether the report is internally consistent; Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the clinical findings; Whether the conclusions correlate the findings from your medical history, clinical examination and laboratory tests and explain all abnormalities;

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested; Whether the report fails to mention an important or relevant complaint within that specialty that is noted in other evidence in the file (e.g., your blindness in one eye, amputations, pain, alcoholism, depression);

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education; and

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) With your permission, or where the examination discloses new diagnostic information or test results that reveal potentially life-threatening situations, we will refer the consultative examination report to your treating physician or psychologist. When we refer the consultative examination report to your treating physician or psychologist without your permission, we will notify you that we have done so.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have access to the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

**§ 404.1519q Conflict of interest.**

All implications of possible conflict of interest between medical or psychological consultants and their medical or psychological practices will be avoided. Such consultants are not only those physicians and psychologists who work for us directly but are also those who do review and adjudication work in the State agencies. Physicians and psychologists who work for us directly as employees or under contract will not work concurrently for a State agency. Physicians and psychologists who do review work for us will not perform consultative examinations for us without our prior approval. In such situations, the physician or psychologist will disassociate himself or herself from further involvement in the case and will not participate in the evaluation, decision, or appeal actions. In addition, neither they, nor any member of their families, will acquire or maintain, either directly or indirectly, any financial interest in a medical partnership, corporation, or similar relationship in which consultative examinations are provided. Sometimes physicians and psychologists who do review work for us will have prior knowledge of a case; for example, when the claimant was a patient. Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on treatment or examination of the claimant.

**Authorizing and Monitoring the Referral Process**

**§ 404.1519s Authorizing and monitoring the consultative examination.**

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient numbers of physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

(d) Each State agency will be responsible for comprehensive oversight management of its consultative examination program, with special emphasis on key providers.

(e) A key consultative examination provider is a provider that meets at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

(2) Any consultative examination provider with a practice of medicine, osteopathy, or psychology directed primarily towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers in the State by dollar volume, as evidenced by prior year data.

(f) State agencies have flexibility in managing their consultative examination programs, but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers, with respect to SSA's program requirements involving consultative examination report content and not with respect to medical techniques;

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case;

(5) Procedures to ensure that only required examinations and tests are authorized in accordance with the standards set forth in this subpart;

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting physicians and psychologists. This includes physician approval for the ordering of any diagnostic test or procedure where the question of significant risk to the claimant/beneficiary might be raised. See § 404.1519m.

(7) Procedures for the ongoing review of consultative examination results to ensure compliance with written guidelines;

(8) Procedures to encourage active participation by physicians in the consultative examination oversight program;

(9) Procedures for handling complaints;

(10) Procedures for evaluating claimant reactions to key providers; and

(11) A program of systematic, onsite reviews of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examinations but, rather, offer an opportunity to talk with claimants at the provider's site before and after the examination and to review the provider's overall operation.

(g) The State agencies will cooperate with us when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

**Procedures To Monitor the Consultative Examination**

**§ 404.1519t Consultative examination oversight.**

(a) We will ensure that referrals for consultative examinations and purchases of consultative examinations are made in accordance with our policies. We will also monitor both the referral processes and the product of the consultative examinations obtained. This monitoring may include reviews by independent medical specialists under direct contract with SSA.

(b) Through our regional offices, we will undertake periodic comprehensive reviews of each State agency to evaluate each State's management of the consultative examination process. The review will involve visits to key providers, with State staff participating, including a program physician when the visit will deal with medical techniques or judgment, or factors that go to the core of medical professionalism.

(c) We will also perform ongoing special management studies of the quality of consultative examinations purchased from key providers and other sources and the appropriateness of the examinations authorized.

10. Section 404.1520 is amended by revising paragraph (a) to read as follows:

**§ 404.1520 Evaluation of disability in general.**

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination or decision whether you are disabled. When you file a claim for a period of disability and/or disability insurance benefits or for child's benefits based on disability, we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider the effect of your physical or mental impairment; if you have more than one impairment, we will also consider the combined effect of your impairments. Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. Once you have been found entitled to disability benefits, we follow a somewhat different order of evaluation to determine whether your entitlement continues, as explained in § 404.1594(f)(6).

* * * * *

11. Section 404.1527 is revised to read as follows:

**§ 404.1527 Evaluating medical opinions about your impairment(s) or disability.**

(a) *General.* (1) You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. See § 404.1505. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. See § 404.1508.

(2) Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(b) *How we consider medical opinions.* In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive.

(c) *Making disability determinations.* After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows.

(1) If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence.

(2) If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have.

(3) If the evidence is consistent but we do not have sufficient evidence to decide whether you are disabled, or if after weighing the evidence we decide we cannot reach a conclusion about whether you are disabled, we will try to obtain additional evidence under the provisions of §§ 404.1512 and 404.1519 through 404.1519h. We will request additional existing records, recontact your treating sources or any other examining sources, ask you to undergo a consultative examination at our expense, or ask you or others for more information. We will consider any additional evidence we receive together with the evidence we already have.

(4) When there are inconsistencies in the evidence that cannot be resolved, or when despite efforts to obtain additional evidence the evidence is not complete, we will make a determination or decision based on the evidence we have.

(d) *How we weigh medical opinions.* Regardless of its source, we will

evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

(1) Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

(2) Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight. When we do not give the treating source's opinion controlling weight, we apply the factors listed below, as well as the factors in paragraphs (d) (3) through (5) of this section in determining the weight to give the opinion. We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.

(i) Length of the treatment relationship and the frequency of examination. Generally, the longer a treating source has treated you and the more times you have been seen by a treating source, the more weight we will give to the source's medical opinion. When the treating source has seen you a number of times and long enough to have obtained a longitudinal picture of your impairment, we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(ii) Nature and extent of the treatment relationship. Generally, the more knowledge a treating source has about your impairment(s) the more weight we will give to the source's medical opinion. We will look at the treatment the source has provided and at the kinds and extent of examinations and testing the source has performed or ordered from specialists and independent laboratories. For example, if your ophthalmologist notices that you have complained of neck pain during your eye examinations, we will consider his or her opinion with respect to your neck pain, but we will give it less weight than that of another physician who has treated you for the neck pain. When the treating source has reasonable knowledge of your impairment(s), we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(3) Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions. We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other examining sources.

(4) Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

(5) Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

(6) Other factors. When we consider how much weight to give to a medical opinion, we will also consider any factors you or others bring to our attention, or of which we are aware, which tend to support or contradict the opinion.

(e) *Medical source opinions on issues reserved to the Secretary.*

(1) Opinions that you are disabled. We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled.

(2) Other opinions on issues reserved to the Secretary. We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from treating and examining sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 of this subpart, your residual functional capacity (see §§ 404.1545 and 404.1546), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Secretary. We will not give any special significance to the source of the opinion on these issues.

(f) *Opinions of nonexamining medical and psychological consultants and other nonexamining physicians and psychologists.* We consider all evidence from nonexamining physicians and psychologists to be opinion evidence. When we consider the opinions of nonexamining sources on the nature and severity of your impairments, we apply the rules set forth in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, and to medical advisors we consult in connection with administrative law judge hearings and Appeals Council review.

(1) At the initial and reconsideration steps in the administrative review process, except in disability hearings, State agency medical and psychological consultants are members of the teams that make the determinations of disability. A State agency medical or psychological consultant will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in Appendix 1 to this subpart, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. Administrative law judges are not bound by any findings made by State agency medical or psychological consultants. However, these findings are considered at the hearing level. See § 404.1512(b)(6). When administrative law judges consider these findings, they will evaluate them using the rules set forth in paragraphs (a) through (e) of this section. Also, administrative law judges may ask for and consider the opinions of medical advisors on the nature and severity of your impairment(s) and whether your impairment(s) equals the requirements

of any listed impairment in appendix 1 to this subpart.

(3) When the Appeals Council makes a decision, it will follow the same rules for considering opinion evidence as administrative law judges follow.

12. Section 404.1545 is amended by revising paragraph (a) to read as follows:

**§ 404.1545 Your residual functional capacity.**

(a) *General.* Your impairment(s) may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in paragraphs (b) physical abilities; (c) mental impairments; and (d) other impairments of this section. A residual functional capacity assessment may include descriptions (including your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations, in addition to those usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 404.1560 through 404.1569, your vocational background is considered along with your residual functional capacity in arriving at a disability determination or decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 404.1594.

* * * * *

13. Section 404.1546 is revised to read as follows:

**§ 404.1546 Responsibility for assessing and determining residual functional capacity.**

The State agency staff medical or psychological consultants or other medical or psychological consultants designated by the Secretary are responsible for ensuring that the State agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff medical or psychological consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by the Secretary. See § 404.1545. For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 404.918, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

14. Section 404.1593 is revised to read as follows:

**§ 404.1593 Medical evidence in continuing disability review cases.**

(a) *General.* If you are entitled to benefits or if a period of disability has been established for you because you are disabled, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard. See §§ 404.1579 and 404.1594.

(b) *Obtaining evidence from your medical sources.* You must provide us with reports from your physician, psychologist, or others who have treated or evaluated you, as well as any other evidence that will help us determine if you are still disabled. See § 404.1512. You must have a good reason for not giving us this information or we may find that your disability has ended. See § 404.1594(e)(2). If we ask you, you must contact your medical sources to help us get the medical reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. See § 404.1512(d)(1) concerning what we mean by every reasonable effort. In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status. See § 404.1512(c).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled. See § 404.1517. We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 404.1519a through 404.1519b.

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

20 CFR part 416, subpart I is amended as follows:

### Subpart I—Determining Disability and Blindness

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

**Authority:** Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2.–3. Section 416.902 is revised to read as follows:

**§ 416.902 General definitions and terms for this subpart.**

As used in the subpart—

*Medical sources* refers to treating sources, sources of record, and consultative examiners for us. See § 416.913.

*Secretary* means the Secretary of Health and Human Services.

*Source of record* means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have or did not have an ongoing treatment relationship with you.

*State agency* means that agency of a State which has been designated by the

State to carry out the disability or blindness determination function.

*Treating source* means your own physician or psychologist who has provided you with medical treatment or evaluation and who has or has had an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with a physician or psychologist when the medical evidence establishes that you see or have seen the physician or psychologist with a frequency consistent with accepted medical practice for the type of treatment and evaluation required for your medical condition(s). We may consider a physician or psychologist who has treated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment is typical for your condition(s). We will not consider a physician or psychologist to be your treating physician if your relationship with the physician or psychologist is not based on your need for treatment, but solely on your need to obtain a report in support of your claim for benefits. In such a case, we will consider the physician or psychologist to be a consulting physician or psychologist.

*We* or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination.

*You* refers to the person who has applied for or is receiving benefits based on disability or blindness.

4. Section 416.903a is added to read as follows:

**§ 416.903a Program integrity.**

We will not use in our program any individual or entity, except to provide existing medical evidence, who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; whose license to provide health care services is currently revoked or suspended by any State licensing authority pursuant to adequate due process procedures for reasons bearing on professional competence, professional conduct, or financial integrity; or who until a final determination is made has surrendered such a license while formal disciplinary proceedings involving professional conduct are pending. By individual or entity we mean a medical or psychological consultant, consultative examination provider, or diagnostic test facility. Also see §§ 416.919 and 416.919g(b).

**§ 416.908 [Amended]**

5. Section 416.908 is amended by adding the cross-reference "(see § 416.927)" at the end of the penultimate sentence before the period.

6. Section 416.912 is revised to read as follows:

**§ 416.912 Evidence of your impairment.**

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are blind or disabled, its effect on your ability to work on a sustained basis. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by "evidence."* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. This includes, but is not limited to:

(1) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 416.928 (b) and (c);

(2) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(3) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(4) Information from other sources, as described in § 416.913(e);

(5) Decisions by any governmental or nongovernmental agency about whether you are disabled or blind; and

(6) At the administrative law judge and Appeals Council levels, certain findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical advisors based on their review of the evidence in your case record. See § 416.927(f) (2) and (3).

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. If we ask you, you must also provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.

(d) *Our responsibility.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports.

(1) "Every reasonable effort" means that we will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one followup request to obtain the medical evidence necessary to make a determination. The medical source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(2) By "complete medical history," we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe that your disability began earlier.

(e) *Recontacting medical sources.* When the evidence we receive from your treating physician or psychologist or other medical source is inadequate for us to determine whether you are disabled, we will need additional information to reach a determination or a decision. To obtain the information, we will take the following actions.

(1) We will first recontact your treating physician or psychologist or other medical source to determine whether the additional information we need is readily available. We will seek additional evidence or clarification from your medical source when the report

from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques. We may do this by requesting copies of your medical source's records, a new report, or a more detailed report from your medical source, including your treating source, or by telephoning your medical source. In every instance where medical evidence is obtained over the telephone, the telephone report will be sent to the source for review, signature and return.

(2) We may not seek additional evidence or clarification from a medical source when we know from past experience that the source either cannot or will not provide the necessary findings.

(f) *Need for consultative examination.* If the information we need is not readily available from the records of your medical treatment source, or we are unable to seek clarification from your medical source, we will ask you to attend one or more consultative examinations at our expense. See §§ 416.917 through 416.919t for the rules governing the consultative examination process. Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources. However, in some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. We will not evaluate this evidence until we have made every reasonable effort to obtain evidence from your medical sources.

7. Section 416.913 is amended by revising paragraph (b)(6) and paragraph (c) and the introductory text of paragraph (b) is republished to read as follows:

**§ 416.913 Medical evidence of your impairment.**

* * * * *

(b) *Medical reports.* Medical reports should include—

* * * * *

(6) A statement about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). Although we will request a medical source statement about what you can still do despite your impairment(s), the lack of the medical source statement will not make the report incomplete. See § 416.927.

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed below. See §§ 416.927 and 416.945(c).

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

* * * * *

8. Section 416.917 is revised to read as follows:

**§ 416.917 Consultative examination at our expense.**

If your medical sources cannot or will not give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to have one or more physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without our advance approval. If we arrange for the examination or test, we will give you reasonable notice of the date, time, and place the examination or test will be given, and the name of the person or facility who will do it. We will also give the examiner any necessary background information about your condition.

9. New §§ 416.919 through 416.919t and the accompanying center headings are added to read as follows:

**Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations**

**§ 416.919 The consultative examination.**

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source, including a pediatrician when appropriate. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 416.919a through § 416.919f. Selection of the source for the examination will be consistent with the provisions of § 416.903a and §§ 416.919g through 416.919j. The rules and procedures for requesting consultative examinations set forth in §§ 416.919a and 416.919b are applicable at the reconsideration and hearing levels of review, as well as the initial level of determination.

**§ 416.919a When we will purchase a consultative examination and how we will use it.**

(a)(1) *General.* The decision to purchase a consultative examination for you will be made after we have given full consideration to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis) is readily available from the records of your medical sources. See § 416.912 for the procedures we will follow to obtain evidence from your medical sources. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. Other situations, including but not limited to the situations listed below, will normally require a consultative examination:

(1) The additional evidence needed is not contained in the records of your medical sources;

(2) The evidence that may have been available from your treating or other medical sources cannot be obtained for reasons beyond your control, such as death or noncooperation of a medical source;

(3) Highly technical or specialized medical evidence that we need is not available from your treating or other medical sources;

(4) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved, and we are

unable to do so by recontacting your medical source; or

(5) There is an indication of a change in your condition that is likely to affect your ability to work, but the current severity of your impairment is not established.

**§ 416.919b When we will not purchase a consultative examination.**

We will not purchase a consultative examination in situations including, but not limited to, the following situations:

(a) When any issues about your actual performance of substantial gainful activity have not been resolved;

(b) When you do not meet all of the nondisability requirements.

**Standards for the Type of Referral and for Report Content**

**§ 416.919f Type of purchased examinations.**

We will purchase only the specific examinations and tests we need to make a determination in your claim. For example, we will not authorize a comprehensive medical examination when the only evidence we need is a special test, such as an X-ray, blood studies, or an electrocardiogram.

**§ 416.919g Who we will select to perform a consultative examination.**

(a) We will purchase a consultative examination only from a qualified medical source. The medical source may be your own physician or psychologist, or another source. If you are a child, the medical source we choose may be a pediatrician. For a more complete list of medical sources, see § 416.913(a).

(b) By "qualified," we mean that the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test we will request; the medical source must not be barred from participation in our programs under the provisions of § 416.903a. The medical source must also have the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

(c) The physician or psychologist we choose may use support staff to help perform the consultative examination. Any such support staff (e.g., X-ray technician, nurse) must meet appropriate licensing or certification requirements of the State. See § 416.903a.

**§ 416.919h Your treating physician or psychologist.**

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating physician or psychologist will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

**§ 416.919i Other sources for consultative examinations.**

We will use a source other than your treating physician or psychologist for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating physician or psychologist prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file which cannot be resolved by going back to your treating physician or psychologist;

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference;

(d) We know from prior experience that your treating physician or psychologist may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

**§ 416.919j Objections to the designated physician or psychologist.**

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be that the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: the presence of a language barrier, the physician's or psychologist's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the physician or psychologist had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is because a physician or psychologist allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 416.919s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. We will handle any objection to use of the substitute physician or psychologist in the same manner. However, if we had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conformed to our guidelines, we will not change your examination.

**§ 416.919k Purchase of medical examinations, laboratory tests, and other services.**

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests such as pulmonary function studies, electrocardiograms, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic.

(a) The rate of payment to be used for purchasing medical or public services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 416.1024 and 416.1026.

(b) If a physician's bill, or a request for payment for a physician's services, includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the independent laboratory or the rate of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping a specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rate of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rate of payment it uses. The

State shall also be responsible for monitoring and overseeing the rate of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

**§ 416.919m Diagnostic tests or procedures.**

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating physician or psychologist or other medical source and will use the results to help us evaluate impairment severity or prognosis. However, we will not order diagnostic tests or procedures that involve significant risk to you, such as myelograms, arteriograms, or cardiac catheterizations for the evaluation of disability under the Supplemental Security Income program. Also, a State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. The responsibility for deciding whether to perform the examination rests with the consultative examining physician or psychologist.

**§ 416.919n Informing the examining physician or psychologist of examination scheduling, report content, and signature requirements.**

The physicians or psychologists who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). We will fully inform consulting physicians or psychologists at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician or psychologist to take a case history and perform the examination, including any needed tests. The following minimum scheduling intervals (i.e., time set aside for the individual, not the actual duration of the consultative examination) should be used.

(1) Comprehensive general medical examination—at least 30 minutes;

(2) Comprehensive musculoskeletal or neurological examination—at least 20 minutes;

(3) Comprehensive psychiatric examination—at least 40 minutes;

(4) Psychological examination—at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(5) All others—at least 30 minutes, or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may require longer scheduling intervals depending on the circumstances in a particular situation. We also recognize that these minimum intervals may have to be adjusted to allow for those claimants that do not attend their scheduled examination. The purpose of these minimum scheduling timeframes is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations (through their normal consultative examination oversight activities) to ensure that any overscheduling is avoided, as overscheduling may lead to examinations that are not thorough.

(b) *Report content.* The reported results of your medical history, examination, requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, and duration of the impairment, and residual functional capacity. The report should reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) *Elements of a complete consultative examination.* A complete consultative examination is one which involves all the elements of a standard examination in the applicable medical specialty. When the report of a complete consultative examination is involved, the report should include the following elements:

(1) Your major or chief complaint(s);

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s);

(3) A description, and disposition, of pertinent "positive" and "negative" detailed findings based on the history, examination and laboratory tests related to the major complaint(s), and any other abnormalities or lack thereof reported or found during examination or laboratory testing;

(4) The results of laboratory and other tests (e.g., X-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of Subpart P of Part 404 of this Chapter);

(5) The diagnosis and prognosis for your impairment(s);

(6) A statement about what you can still do despite your impairment(s), unless the claim is based on statutory blindness. This statement should describe the opinion of the consultative physician or psychologist about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the consultative physician or psychologist about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting; and

(7) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(d) *When a complete consultative examination is not required.* When the evidence we need does not require a complete consultative examination (for example, we need only a specific laboratory test result to complete the record), we may not require a report containing all of the elements in paragraph (c).

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the

report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the examining physician or psychologist on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a physician or psychologist or the physician's or psychologist's signature entered by any other person is not acceptable.

**§ 416.919o When a properly signed consultative examination report has not been received.**

If a consultative examination report is received unsigned or improperly signed we will take the following action.

(a) *When we will make determinations and decisions without a properly signed report.* We will make a determination or decision in the circumstances specified in paragraphs (a)(1) and (a)(2) of this section without waiting for a properly signed consultative examination report. After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the physician or psychologist who performed the original consultative examination has died.

(1) Continuous period of disability allowance with an onset date as alleged or earlier than alleged; or

(2) Continuance of disability.

(b) *When we will not make determinations and decisions without a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the determinations or decisions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section. When we need a properly signed consultative examination report to make these determinations or decisions, we must obtain such a report. If the signature of the physician or psychologist who performed the original examination cannot be obtained because the physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Allowance of disability which has ended; or

(4) Allowance with an onset date later than the filing date.

**§ 416.919p Reviewing reports of consultative examinations.**

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider the following factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses;

(2) Whether the report is internally consistent; Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the clinical findings; Whether the conclusions correlate the findings from your medical history, clinical examination and laboratory tests and explain all abnormalities;

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested; Whether the report fails to mention an important or relevant complaint within that specialty that is noted in other evidence in the file (e.g., your blindness in one eye, amputations, pain, alcoholism, depression);

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education; and

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) With your permission, or where the examination discloses new diagnostic information or test results that reveal potentially life-threatening situations, we will refer the consultative examination report to your treating physician or psychologist. When we refer the consultative examination report to your treating physician or psychologist without your permission, we will notify you that we have done so.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have access to the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

**§ 416.919q Conflict of interest.**

All implications of possible conflict of interest between medical or psychological consultants and their medical or psychological practices will be avoided. Such consultants are not only those physicians and psychologists who work for us directly but are also those who do review and adjudication work in the State agencies. Physicians and psychologists who work for us directly as employees or under contract will not work concurrently for a State agency. Physicians and psychologists who do review work for us will not perform consultative examinations for us without our prior approval. In such situations, the physician or psychologist will disassociate himself or herself from further involvement in the case and will not participate in the evaluation, decision, or appeal actions. In addition, neither they, nor any member of their families, will acquire or maintain, either directly or indirectly, any financial interest in a medical partnership, corporation, or similar relationship in which consultative examinations are provided. Sometimes physicians and psychologists who do review work for us will have prior knowledge of a case; for example, when the claimant was a patient. Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on treatment or examination of the claimant.

**Authorizing and Monitoring the Referral Process**

**§ 416.919s Authorizing and monitoring the consultative examination.**

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient numbers of physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

(d) Each State agency will be responsible for comprehensive oversight management of its consultative examination program, with special emphasis on key providers.

(e) A key consultative examination provider is a provider that meets at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security and Supplemental Security Income programs of at least $100,000; or

(2) Any consultative examination provider with a practice of medicine, osteopathy, or psychology directed primarily towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers in the State by dollar volume, as evidenced by prior year data.

(f) State agencies have flexibility in managing their consultative examination programs, but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers, with respect to SSA's program requirements involving consultative examination report content and not with respect to medical techniques;

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case;

(5) Procedures to ensure that only required examinations and tests are authorized in accordance with the standards set forth in this subpart;

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting physicians and psychologists. This includes physician approval for the ordering of any diagnostic test or procedure where the question of significant risk to the claimant/beneficiary might be raised. See § 416.919m.

(7) procedures for the ongoing review of consultative examination results to ensure compliance with written guidelines;

(8) Procedures to encourage active participation by physicians and psychologists in the consultative examination oversight program;

(9) Procedures for handling complaints;

(10) Procedures for evaluating claimant reactions to key providers; and

(11) A program of systematic, onsite reviews of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examinations but, rather, offer an opportunity to talk with claimants at the provider's site before and after the examination and to review the provider's overall operation.

(g) The State agencies will cooperate with us when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

**Procedures To Monitor the Consultative Examination**

**§ 416.919t Consultative examination oversight.**

(a) We will ensure that referrals for consultative examinations and purchases of consultative examinations are made in accordance with our policies. We will also monitor both the referral processes and the product of the consultative examinations obtained. This monitoring may include reviews by independent medical specialists under direct contract with SSA.

(b) Through our regional offices, we will undertake periodic comprehensive reviews of each State agency to evaluate each State's management of the consultative examination process. The review will involve visits to key providers, with State staff participating, including a program physician when the visit will deal with medical techniques or judgment, or factors that go to the core of medical professionalism.

(c) We will also perform ongoing special management studies of the quality of consultative examinations purchased from key providers and other sources and the appropriateness of the examinations authorized.

10. Section 416.920 is amended by revising paragraph (a) to read as follows:

**§ 416.920 Evaluation of disability of adults, in general.**

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination or decision whether you are disabled. When you file a claim for Supplemental Security Income disability benefits and are age 18 or older, we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider the effect of your physical or mental impairment; if you have more than one impairment, we will also consider the combined effect of your impairments. Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. Once you have been found eligible for Supplemental Security Income benefits based on disability, we follow a somewhat different order of evaluation to determine whether your eligibility continues, as explained in § 416.994(f)(6).

* * * * *

11. Section 416.927 is revised to read as follows:

**§ 416.927 Evaluating medical opinions about your impairment(s) or disability.**

(a) *General.* (1) You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. See § 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. See § 416.908.

(2) Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(b) *How we consider medical opinions.* In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive.

(c) *Making disability determinations.* After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows.

(1) If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our

determination or decision based on that evidence.

(2) If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have.

(3) If the evidence is consistent but we do not have sufficient evidence to decide whether you are disabled, or, if after weighing the evidence we decide we cannot reach a conclusion about whether you are disabled, we will try to obtain additional evidence under the provisions of §§ 416.912 and 416.919 through 416.919h. We will request additional existing records, recontact your treating sources or any other examining sources, ask you to undergo a consultative examination at our expense, or ask you or others for more information. We will consider any additional evidence we receive together with the evidence we already have.

(4) When there are inconsistencies in the evidence that cannot be resolved, or when despite efforts to obtain additional evidence the evidence is not complete, we will make a determination or decision based on the evidence we have.

(d) *How we weigh medical opinions.* Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

(1) *Examining relationship.* Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

(2) *Treatment relationship.* Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight. When we do not give the treating source's opinion controlling weight, we apply the factors listed below, as well as the factors in paragraphs (d) (3) through (5) of this section in determining the weight to give the opinion. We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.

(i) Length of the treatment relationship and the frequency of examination. Generally, the longer a treating source has treated you and the more times you have been seen by a treating source, the more weight we will give to the source's medical opinion. When the treating source has seen you a number of times and long enough to have obtained a longitudinal picture of your impairment, we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(ii) Nature and extent of the treatment relationship. Generally, the more knowledge a treating source has about your impairment(s) the more weight we will give to the source's medical opinion. We will look at the treatment the source has provided and at the kinds and extent of examinations and testing the source has performed or ordered from specialists and independent laboratories. For example, if your ophthalmologist notices that you have complained of neck pain during your eye examinations, we will consider his or her opinion with respect to your neck pain, but we will give it less weight than that of another physician who has treated you for the neck pain. When the treating source has reasonable knowledge of your impairment(s), we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(3) *Supportability.* The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions. We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other examining sources.

(4) *Consistency.* Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

(5) *Specialization.* We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

(6) *Other factors.* When we consider how much weight to give to a medical opinion, we will also consider any factors you or others bring to our attention, or of which we are aware, which tend to support or contradict the opinion.

(e) *Medical source opinions on issues reserved to the Secretary.*

(1) Opinions that you are disabled. We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled.

(2) Other opinions on issues reserved to the Secretary. We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from treating and examining sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in Appendix 1 to subpart P of part 404 of this chapter, your residual functional capacity (see §§ 416.945 and 416.946), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Secretary. We will not give any special significance to the source of the opinion on these issues.

(f) *Opinions of nonexamining medical and psychological consultants and other nonexamining physicians and psychologists.* We consider all evidence from nonexamining physicians and psychologists to be opinion evidence. When we consider the opinions of nonexamining sources on the nature and severity of your impairments, we apply the rules set forth in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, and to medical advisors we consult in connection with administrative law judge hearings and Appeals Council review.

(1) At the initial and reconsideration steps in the administrative review process, except in disability hearings, State agency medical and psychological

consultants are members of the teams that make the determinations of disability. A State agency medical or psychological consultant will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in Appendix 1 to subpart P of part 404 of this chapter, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. Administrative law judges are not bound by any findings made by State agency medical or psychological consultants. However, these findings are considered at the hearing level. See § 416.912(b)(6). When administrative law judges consider these findings, they will evaluate them using the rules set forth in paragraphs (a) through (e) of this section. Also, administrative law judges may ask for and consider the opinions of medical advisors on the nature and severity of your impairment(s) and whether your impairment(s) equals the requirements of any listed impairment in appendix 1 to subpart P of part 404 of this chapter.

(3) When the Appeals Council makes a decision, it will follow the same rules for considering opinion evidence as administrative law judges follow.

12. Section 416.945 is amended by revising paragraph (a) to read as follows:

**§ 416.945 Your residual functional capacity.**

(a) *General.* Your impairment(s) may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in paragraphs (b) physical abilities; (c) mental impairments; and (d) other impairments of this section. A residual functional capacity assessment may include descriptions (including your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations, in addition to those usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 416.960 through 416.969, your vocational background is considered along with your residual functional capacity in arriving at a disability determination or decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 416.994.

* * * * *

13. Section 416.946 is revised to read as follows:

**§ 416.946 Responsibility for assessing and determining residual functional capacity.**

The State agency staff medical or psychological consultants or other medical or psychological consultants designated by the Secretary are responsible for ensuring that the State agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff medical or psychological consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by the Secretary. See § 416.945. For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 416.918, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

14. Section 416.993 is revised to read as follows:

**§ 416.993 Medical evidence in continuing disability review cases.**

(a) *General.* If you are entitled to benefits because you are disabled, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard. See §§ 416.979 and 416.994.

(b) *Obtaining evidence from your medical sources.* You must provide us with reports from your physician, psychologist, or others who have treated or evaluated you, as well as any other evidence that will help us determine if you are still disabled. See § 416.912. You must have a good reason for not giving us this information or we may find that your disability has ended. See § 416.994(e)(2). If we ask you, you must contact your medical sources to help us get the medical reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. See § 416.912(d)(1) concerning what we mean by every reasonable effort. In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status. See § 416.912(c).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled. See § 416.917. We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 416.919a through 416.919b.

[FR Doc. 91-17986 Filed 7-31-91; 8:45 am]
BILLING CODE 4190-29-M

Federal Register

Thursday
August 1, 1991

Part IV

# Department of Transportation

## Federal Aviation Administration

14 CFR Parts 21 and 36
Primary Category Aircraft; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 21 and 36**

**[Docket No. 23345; Notice No. 89-7]**

**RIN 2120-AB53**

## Primary Category Aircraft

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

**ACTION:** Supplemental Notice of Proposed Rulemaking (SNPRM).

**SUMMARY:** This supplemental notice corrects statements made in Notice No. 89-7, concerning the applicability of noise standards for airplanes in the proposed category of primary aircraft. Contrary to what was stated in the notice, existing noise standards would be applicable to primary category airplanes, primary category-light airplanes and helicopters. It was not the intention of the FAA to imply that certification in the primary category constitutes a waiver of these noise requirements. The FAA seeks additional comments from the public on amended language to clarify the application of noise standards to the proposed new categories of aircraft.

**DATES:** Comments must be submitted on or before September 30, 1991.

**ADDRESSES:** Comments on this notice should be mailed in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23345, 800 Independence Ave. SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23345. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m. except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** T. Lynn Brown, Aircraft Engineering Division, (AIR-110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9589.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

This supplemental notice modifies Notice 89-7, primary Category Aircraft (54 FR 9738, March 7, 1989). Comments on the effect of this change on the proposed rules are invited. Comments should be limited to the changes proposed in this document. This notice does not serve to reopen the comment period on the remainder of the original primary category proposal. Interested persons are invited to comment on any portion of this supplemental notice by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals as modified in this document are also invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 23345." The postcard will be date stamped and mailed to the commenter.

### Availability of SNPRM

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration Office of Public Affairs, Attention: Public Inquiry Center (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this SNPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

On March 7, 1989, the FAA published Notice No. 89-7 (Primary Category Aircraft), which proposed the adoption of a new category of aircraft to be known as "primary category" aircraft. Such aircraft would be of simple design intended for pleasure and personal use only. The aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single, naturally aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less, a maximum weight of 2,500 pounds or less, and would have unpressurized cabins. The NPRM also discussed proposals for type, production, and airworthiness certification standards and procedures that would be simpler than those currently contained in Federal Aviation Regulations (FAR) Parts 21, 23, and 27 and that are applicable to aircraft of this size and type.

As proposed, the rule would not require type or airworthiness certification of ultralight vehicles, as defined in the FAR, but it would permit certification as "primary category-light" as an option for aircraft currently classified as powered ultralights and "growth versions" of ultralights having a maximum certificated weight of 1,000 pounds or less. The proposed rules would also permit certain aircraft currently certificated in the standard (normal, utility, or acrobatic) category to be converted to the primary category.

In the Supplementary Information section of Notice No. 89-7, it was incorrectly stated that within the primary category, only small propeller-driven airplanes would be subject to the noise requirements of FAR Part 36. This supplemental notice is intended to clarify that, as proposed, helicopters in this category would also be subject to the noise restrictions.

### Discussion

Effective February 5, 1988, FAR part 36 was amended (53 FR 3534, February 5, 1988) to add Appendix H, Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories, applicable to helicopters for which application for type certification was made on or after March 6, 1986. Effective December 22, 1988, FAR Part 36 was further amended (53 FR 47394, November 22, 1988) to add a new Appendix G, Noise Certification Standards for Propeller-Driven Small Airplanes, applicable to aircraft for which certification tests were not completed before December 22, 1988. Appendix G contains new noise testing procedures to be used in all certification tests after December 22, 1988, although the stringency of the actual noise limits to be met was not substantially affected.

The effect of these two amendments was overlooked when the FAA issued the primary category NPRM. In addition, the requirements of section 611 of the Federal Aviation Act of 1958 (FA Act), which apply to all type certificated aircraft, may affect the procedures used to certify these aircraft, as discussed in more detail later in this preamble.

*Part 36 Requirements*

As proposed, primary category aircraft would be subject to part 36, as follows:

Rotorcraft

Helicopters certificated in the primary category would be required to demonstrate compliance with the noise standards and testing procedures in appendix H to part 36. Rotorcraft other than helicopters are not subject to noise requirements at this time.

Propeller-Driven Airplanes

Primary category propeller-driven airplanes would be required to meet the requirements of appendix G to part 36. As discussed below, however, this would not apply to aircraft that had been certificated previously in the standard category, had already demonstrated compliance with appendix F or G, and are being converted to primary category.

Ultralights

Ultralights, as defined in part 103 of the FAR, are not currently subject to the noise requirements of either part 36 or section 611 of the FA Act. However, persons choosing to certificate their ultralight vehicles in the primary category would also be required to comply with appendix G.

Aircraft Previously Certificated in the Standard Category

The FAA proposes that aircraft previously certificated in the standard (normal, utility, or acrobatic) category that have shown compliance with the applicable requirements of part 36 (appendix F, G, or H) would not be required to re-demonstrate compliance with part 36 when seeking conversion to the primary category. However, aircraft seeking conversion that also undergo acoustical changes as defined in parts 21 and 36 would be required to comply with appendix G or H as applicable. Moreover, conversions to primary category for helicopters that were type certificated before appendix H became effective would be required to meet appendix H. Helicopters require treatment that differs from the treatment for part 23 airplanes because no part 36 noise control standards existed for helicopters prior to adoption of appendix H.

The FAA is required to develop and apply noise control standards to all civil aircraft. These standards are set out in 14 CFR part 36. Accordingly, aircraft seeking certification under primary category would be required to comply with the standards of Part 36; and the cost of such compliance must be considered in evaluating the proposed rule.

*Noise Control Requirements of the FA Act*

The Noise Control Act of 1972 amended section 611 of the FA Act to require the FAA, before issuing an original type certificate, to determine whether substantial noise abatement can be achieved by prescribing standards and regulations, unless standards and regulations for that aircraft already exist. In making this determination, the FAA is required to consider, among other issues, whether any proposed standard or regulation would be economically reasonable, technologically practicable, and appropriate for the particular type of aircraft. The Noise Control Act applies to all aircraft except ultralights and aircraft with experimental certificates, neither of which are subject to type certification.

**Supplemental Regulatory Evaluation Summary**

The FAA has considered the economic impact of this proposed modification of Notice 89–7, Primary Category Aircraft. Helicopters certificated under the proposed regulations would be subject to the noise standards and testing procedures in appendix H to part 36, regardless of any statement to the contrary in FAA's Notice 89–7. The FAA is required to apply these noise standards to all civil aircraft. Thus, any incremental costs resulting from the imposition of these noise standards to rotorcraft certificated under the proposed Primary Category Aircraft regulations would be attributable to part 36 rather than to the proposed rule.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society from the regulatory changes outweigh the potential costs that would be imposed on society. In response to this requirement, the FAA normally performs a benefit/cost analysis of each proposed and final change to the FAR. In the case of this supplemental notice, however, the FAA has determined that a benefit/cost analysis is unwarranted because the proposal merely corrects and clarifies Notice 89–7 to make it consistent with FAR part 36.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The Act requires that a Regulatory Flexibility Analysis be conducted if a rule will have a significant economic impact, either detrimental or beneficial, on a significant number of small business entities. The proposed modification of Notice 89–7 will neither eliminate any present regulations or impose any new regulations and, thus, will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, a regulatory flexibility analysis of this supplemental notice of proposed rulemaking is not required.

**International Trade Impact Assessment**

The proposed modification of Notice 89–7 will neither eliminate any present regulations or impose any new ones. As a result, affected manufacturers and operators will not incur additional costs or realize significant savings. Thus, the proposed modification of Notice 89–7 will not have any impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

**Federalism Implications**

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

**Conclusion**

This supplemental NPRM clarifies the original Notice for primary category aircraft. For the reasons discussed in the preamble to the previous Notice and the preamble to this supplemental Notice, and based on the findings in the Regulatory Flexibility determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, it is certified that Notice No. 89–7, as corrected by this Notice, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal, including this supplemental Notice, is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal, including a supplement relating to the corrections in this notice, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

**List of Subjects**

*14 CFR Part 21*

Aircraft, Aviation safety.

*14 CFR Part 36*

Aircraft, Noise control.

**The Proposed Amendments**

In consideration of the foregoing, the Federal Aviation Administration amends Notice No. 89–7, Primary Category Aircraft NPRM (54 FR 9738, March 7, 1989) as follows:

## PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 is revised to read as follows:

**Authority:** 49 U.S.C. 1344, 1346(c), 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

2. Proposed § 21.17 is amended by revising paragraph (f)(2) to read as follows:

**§ 21.17 Designation of applicable regulations.**

* * * * *

(f) * * *

(2) The noise standards of part 36 applicable to primary category aircraft.

3. Proposed § 21.184 is amended by revising paragraph (f) to read as follows:

**§ 21.184 Issue of special airworthiness certificates for primary category aircraft.**

* * * * *

(f) For all primary category aircraft (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter), no special airworthiness certificate is originally issued under this section unless the applicant shows that the type design complies with the applicable airworthiness requirements in this section and the applicable noise requirements of part 36 as follows:

(1) Primary category helicopters, including helicopters that were previously certificated in the standard (normal) category and are being converted to the primary category, must be shown to comply with the requirements of appendix H to part 36.

(2) Primary category propeller-driven airplanes must be shown to comply with the requirements of appendix G to part 36, unless previously certificated under appendix F in the standard (normal, utility, or acrobatic) category.

(3) Primary category-light aircraft must comply with the applicable requirements of appendix G or H to part 36.

## PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

4. The authority citation for part 36 is revised to read as follows:

**Authority:** 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et seq.; Sec. 124 of Pub. L. 08–473, E.O. 11514; 49 U.S.C. 106(g).

**§ 36.9 [Amended]**

5. The introductory paragraph of § 36.9 is amended by adding "primary and primary light," before the word "normal,".

**§ 36.11 [Amended]**

6. The introductory paragraph of § 36.11 is amended by adding "primary and primary light," before the word "normal,".

7. The proposed revision to § 36.501(a)(1) contained in the previous NPRM Notice 89–7 is withdrawn; and a new paragraph (a)(3) is added to read as follows:

**§ 36.501 Noise limits.**

(a) * * *

(3) Airplanes in the primary category, as follows:

(i) For all primary category airplanes not previously certificated under appendix F in the standard (normal, utility, or acrobatic) category, compliance must be shown as prescribed in appendix G.

(ii) For all primary category-light aircraft, compliance must be shown with appendix G or appendix H, as applicable.

**§ 36.801 [Amended]**

8. Section 36.801 is amended by adding "primary and primary-light," before the word "normal,".

**§ 36.805 [Amended]**

9. Section 36.805(a) is amended by adding "primary and primary-light," before the word "normal,"

Issued in Washington, DC, on July 26, 1991.

**Thomas E. McSweeny,**

*Acting Director, Aircraft Certification Service.*

[FR Doc. 91–18165 Filed 7–26–91; 4:39 pm]

BILLING CODE 4910–13–M

federal register

Thursday
August 1, 1991

Part V

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 21, 36, 43, 91, 141, and 147**

**Primary Category Aircraft; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**14 CFR Parts 21, 36, 43, 91, 141, and 147**

**[Docket No. 23345; Notice No. 89-7A]**

**RIN 2120-AB53**

## Primary Category Aircraft

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** This document reopens the comment period for Notice of Proposed Rulemaking (NPRM) No. 89-7, Primary Category Aircraft. In that notice, the FAA proposed a new category of aircraft, primary category aircraft, and simplified procedures for type, production, and airworthiness certification and associated maintenance procedures for those aircraft. After the close of the comment period, representatives of the Experimental Aircraft Association (EAA) submitted additional comments. This document summarizes those comments and reopens the comment period to afford all interested persons an opportunity to comment on those issues addressed by the EAA.

**DATES:** Comments must be received on or before September 30, 1991.

**ADDRESSES:** Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23345, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23345. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** T. Lynn Brown, Aircraft Engineering Division, (AIR-110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9589.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to comment on any portion of this notice, including the environmental, energy, or economic impact that might result from adopting the proposals. Comments should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule, must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 23345." The postcard will be date stamped and mailed to the commenter.

### Availability of NPRM

Any person may obtain a copy of this notice and Notice No. 89-7 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the appropriate notice numbers.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office, a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

On March 7, 1989, the FAA issued Notice No. 89-7 (54 FR 9738), proposing the adoption of a new category of aircraft to be known as primary category aircraft, which would be of simple design and intended for pleasure and personal use only. As described in the notice, primary category aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single naturally-aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less, would have a maximum weight of 2,500 pounds or less, and would have an unpressurized cabin. The notice proposed to permit pilot-owners of primary category aircraft to do certain maintenance procedures, including inspections, on their own aircraft after receiving the appropriate training. The notice also proposed to permit the conversion of aircraft that are within the primary category engine and weight limits from standard category to primary category. The notice proposed to allow the use of primary category aircraft (excluding primary category-light aircraft) for pilot training, and to prohibit the use of all primary category aircraft for compensation or hire. The notice contained other proposals which are not addressed by this reopening of the comment period.

The proposed rules were promulgated in response to a 1984 petition for rulemaking submitted jointly by the Experimental Aircraft Association (EAA) and the Aircraft Owners and Pilots Association (AOPA). The petitioners, citing a decline in the general aviation industry in the United States, urged the establishment of standards and procedures that would encourage the production of affordable aircraft suitable for general aviation use.

The comment period for Notice No. 89-7 closed on September 7, 1989. In February 1990, the EAA requested a meeting with the FAA to discuss and revise its comments concerning primary category aircraft maintenance, the parameters used to identify a primary category aircraft, the rental of primary category aircraft, and the use of those aircraft for pilot training. The EAA stated that there had been significant developments in the general aviation industry since the date of its original petition in 1984. Specifically, the EAA pointed out that many small aircraft manufacturers had gone out of business since 1984. The EAA also stated that kit manufacturers would not want to begin large-scale production of primary category aircraft if the rules were adopted as proposed.

Because of the higher cost of already assembled kit aircraft, kit manufacturers believe that the major domestic market will be limited to fixed-base operators (FBO's) and flying clubs, not individuals. Also, the EAA reports that kit manufacturers export 36.5% of their total production and that kit manufacturers believe this percentage would continue for already assembled kit aircraft. However, other Civil Airworthiness Authorities might not accept already assembled primary category aircraft into their respective countries because the aircraft would not meet International Civil Aviation Organization Annex 8 requirements which compel the State's certification authority to set aircraft airworthiness standards, and no airworthiness standard is envisioned for primary category aircraft. Consequently, the EAA wished to submit additional comments based on its re-evaluation of the proposed rules. A summary of this meeting has been placed in Docket No. 23345. Following the meeting, the FAA received additional written comments from the EAA, which have also been placed in the docket.

The FAA has determined that the EAA's comments and recommended changes merit consideration. Accordingly, the FAA is reopening the comment period to give all interested parties an opportunity to review the EAA's comments and respond by submitting additional comments.

The EAA recommends changing the criteria for primary category aircraft

from a maximum certificated weight of 2,500 pounds and a single, naturally-aspirated engine with a certificated takeoff rating of 200 shaft horsepower or less, to a maximum weight of 2,700 pounds and a stall speed of 61 knots or less (or in rotorcraft, a 6-pound per square foot disc loading). According to the EAA, the increased weight would permit manufacturers to produce a four-place aircraft with sufficient performance to operate in high-density altitude conditions. The EAA now recommends a stall speed limitation instead of an engine horsepower limit because stall speed would better define airplane performance and the airplane's landing speed in the event of a power failure. The EAA believes that, for the last 50 years, the 61-knot stall speed limitation in Part 23 has established acceptable levels of single-engine airplane performance for safe operation by general aviation pilots. Therefore, the EAA desires to use a stall speed limitation to establish performance criteria for primary category aircraft. The EAA believes that a 61-knot stall speed limitation will require the aircraft designer to define the wing area, wing loading, aircraft size, landing gear design, and powerplant horsepower and size. The EAA believes that stall speed limitations govern aircraft performance more accurately than engine horsepower limitations. The EAA also stated that a rotorcraft 6-pound per square foot disc loading limitation similarly restricts rotorcraft performance but did not provide any rationale for this belief. The FAA seeks comments on these issues.

The proposed rules do not permit primary category aircraft to be used for compensation or hire, or to train new pilots. The proposed rules allow aeronautical experience, including flight instruction, obtained while operating a primary category aircraft (excluding primary category-light aircraft) to be credited toward pilot certificate and rating requirements in accordance with part 61. However, aircraft used for training by Part 141 pilot schools would still be required to have standard category airworthiness certificates.

The EAA urges that the proposed rules be modified to permit rental for pilot training and personal use, noting that the number of standard category training aircraft available has decreased dramatically since the time of its original petition. The EAA asserts that rental for personal use would open a substantial market with FBO's. The FAA welcomes additional comments on this issue.

The petitioner continues to support the proposal that would permit pilot-owners, after appropriate training, to perform certain maintenance and inspection functions on their own aircraft, and to allow the conversion from standard category aircraft to primary category aircraft as a means to extend this maintenance privilege. The petitioner recommends that those aircraft used for rental or pilot training be maintained only by certificated mechanics or repair stations. However, the petitioner recommends that the proposal should be modified to state that these rental or pilot training aircraft maintenance requirements should not apply to those primary category aircraft, maintained by the pilot-owner, that would be used in providing limited "checkouts" for other pilots. Additional comments on this subject are also invited.

The FAA also requests public comment on any economic impact that these changes would have. The FAA requests that detailed data on costs and benefits of these changes be submitted.

## Reopening of Comment Period

Department of Transportation (DOT) policy encourages full public participation in the development of rules. Therefore, the FAA is providing the public an equal opportunity to present their views. DOT policy also provides that the general public should be afforded adequate knowledge of contacts made with individual members of the public at all times between the issuance of an NPRM and the issuance of any final rule or other disposition. Since the EAA was afforded the opportunity to revise its original proposal, the FAA has determined that it is necessary to reopen the comment period for Notice No. 89–7. This reopening provides that all interested persons are afforded an equal opportunity to comment specifically on the EAA proposals.

## Conclusion

This document reopens the comment period on Notice 89–7, Primary Category Aircraft. The FAA requests comments on the following proposed changes to Notice 89–7.

(1) A change in the maximum weight criteria from 2500 to 2700 pounds.

(2) Replacement of the 200-horsepower engine limitation with a 61-knot stall speed limitation for airplanes and a 6-pound per square foot limitation for rotorcraft.

(3) Allow the use of primary category aircraft for primary pilot training and for rental if the aircraft is maintained by an FAA certificated mechanic or repair station.

(4) Allow the use of primary category aircraft that are maintained by the pilot-owner, rather than an FAA certificated mechanic or repair station, to provide limited "checkouts" for other pilots.

The FAA has determined that this document, like Notice No. 89–7, is not major under Executive Order 12291 but, because of substantial public interest, is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, it is certified that reopening the docket for Notice No. 89–7 will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the economic impact of this document is minimal, a full regulatory evaluation is not required.

Issued in Washington, DC on July 26, 1991.

**Thomas E. McSweeny,**

*Acting Director, Aircraft Certification Service.*

[FR Doc. 91–18164 Filed 7–26–91; 4:39 pm]

BILLING CODE 4910–13–M

federal register

Thursday
August 1, 1991

Part VI

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 201, 203, 234**

**Revisions to FHA Maximum Loan and Mortgage Limits for High Cost Areas; Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 201, 203, and 234**

**[Docket No. N-91-3291; FR-3069-N-01]**

# Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

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

**ACTION:** Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

**SUMMARY:** This Notice is the annual complete listing of areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act and each area's applicable limits. Loan and mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing sales prices.

**EFFECTIVE DATE:** August 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** For single family: Morris Carter, Director, Single Family Development Division, Room 9272; telephone (202) 708-2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, room 9158; telephone (202) 708-2880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

## Background

The National Housing Act (NHA), 12 U.S.C. 1710-1749, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam Hawaii, and the Virgin Islands.

The last comprehensive list of high-cost areas was published on January 12, 1990 (55 FR 1312) listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area. Amendments to the annual listing were published on March 8, 1990 (55 FR 8464), June 14, 1990 (55 FR 24075), September 12, 1990 (55 FR 37462), April 5, 1991 (56 FR 14021), and May 14, 1991 (56 FR 22114).

## This Document

In this document, the Department publishes its entire list of high-cost areas with applicable mortgage limits. This document incorporates the changes published on March 8, 1990 (55 FR 8464), June 14, 1990 (55 FR 24075), September 12, 1990 (55 FR 37462), April 5, 1991 (56 FR 14021), and May 14, 1991 (56 FR 22114), as well as new and increased limits announced for the first time in this document.

This document adds the following new areas, with applicable limits, to the high-cost list:

### New Areas

Gadsen, AL MSA
Houston County, AL
Fayetteville-Springdale, AR MSA
Albany, GA MSA
Dawson County, GA
Springfield, IL MSA
Anderson, IN MSA
Owensboro, KY MSA
Lafayette, LA MSA
Duluth, MN MSA
St. Joseph, MO MSA
Springfield, MO MSA
Mansfield, OH MSA
Steubenville-Weirton, OH MSA
Toledo, OH MSA
Lawton, OK MSA
Erie County, PA MSA
Johnstown, PA MSA
Williamsport, PA MSA
El Paso, TX MSA

This document also revises the existing limits for the following areas.

### Revised Areas

Anniston, AL MSA
Birmingham, AL MSA
Huntsville, AL MSA
Mobile, AL MSA
Tuscaloosa, AL MSA
Tucson, AZ MSA
Amadore County, CA
Bakersfield, CA MSA
Chico, CA MSA
Fresno, CA MSA
Modesto, CA MSA
Redding, CA MSA
Merced County, CA
Stockton, CA MSA
Colorado Springs, CO MSA
Greeley, CO MSA
Kent County, DE
Wilmington, DE-MD-NJ MSA
Bradenton, FL MSA
Gainesville, FL MSA
Lakeland-Winter Haven, FL MSA
Tallahassee, FL MSA
Augusta, GA-SC MSA
Hall County, GA
Macon-Warner Robins, GA MSA
Savannah, GA MSA
State of Hawaii
Aurora-Elgin, IL MSA
Champaign-Urbana-Rantoul, IL MSA
Chicago, IL MSA
Joliet, IL MSA
Bloomington, IN MSA
Fort Wayne, IN MSA
Indianapolis, IN MSA
Davenport-Rock Island-Moline, IA-IL MSA
Dubuque, IA MSA
Lawrence, KS MSA
Topeka, KS MSA
Alexandria, LA MSA
Lake Charles, LA MSA
Portland, ME MSA
Hagerstown, MD MSA
Detroit, MI MSA
Grand Rapids, MI MSA
Kalamazoo, MI MSA
Lansing-East Lansing, MI MSA
Rochester, MN MSA
Billings, MT MSA
Great Falls, MT MSA
Las Vegas, NV MSA
Reno, NV MSA
Douglas County, NV
Vineland-Millville-Bridgeton, NJ MSA
Albuquerque, NM MSA
Orange County, NY MSA
Rochester, NY MSA
Burlington, NC MSA
Charlotte-Gastonia-Rock Hill, NC-SC MSA
Fayetteville, NC MSA
Raleigh-Durham, NC MSA
Wilmington, NC MSA
Akron, OH MSA
Canton, OH MSA
Cincinnati-Hamilton, OH-KY-IN, MSA
Cleveland, OH MSA
Dayton-Springfield, OH MSA
Lima, OH MSA
Lorain-Elyria, OH MSA
Eugene-Springfield, OR MSA
Medford, OR MSA
Allentown-Bethlehem, PA MSA
Franklin County, PA
Lancaster, PA MSA
Pittsburgh, PA MSA
Reading, PA MSA
York, PA MSA
Columbia, SC MSA
Knoxville, TN MSA
Abilene, TX MSA
Beaumont-Port Arthur, TX MSA
Bryan-College Station, TX MSA
Galveston-Texas City, TX MSA
San Angelo, TX MSA
Tyler, TX MSA
Waco, TX MSA
Provo-Orem, UT MSA
Salt Lake City-Ogden, UT MSA
Burlington, VT MSA
Charlottesville, VA MSA
Norfolk-VA Beach-Newport News, VA MSA
King William County, VA
Shenandoah County, VA
Bremerton, WA MSA

Richland-Kennewick-Pasco, WA MSA
Seattle, WA MSA
Tacoma, WA MSA
Island County, WA
Mason County, WA

These high-cost limits are effective August 1, 1991, and supersede other published amounts in effect, to the extent they are inconsistent with figures appearing in this document.

These amendments appear in two parts. Part I explains how the high-cost limits are calculated for manufactured home and lot loans insured under title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(c) and 214 of the National Housing Act.

**List of Subjects**

*24 CFR Part 201*

Health facilities, Historic preservation, Home improvement, Loan programs-housing and community development, Manufactured homes, Reporting and recordkeeping requirements.

*24 CFR Part 203*

Hawaiian Natives, Indians: lands, Home Improvement, Loan programs-housing and community development, Mortgage Insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 234*

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

**National Housing Act High Cost Mortgage Limits**

*Part I: Method of Computing Limits Under Title I, National Housing Act*

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, Hawaii, and the Virgin Islands):*

To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Lewiston-Auburn, ME MSA has a one-family limit of $117,650. The combination home and lot loan limit is $117,650 × .80, or $94,120.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam, Hawaii and the Virgin Islands):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Lewiston-Auburn, ME MSA has a one-family limit of $117,650. The lot-only loan limit is $117,650 × .20, or $23,530.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. ($13,500 × 140%).

D. *Limits in the Virgin Islands:* For the Virgin Islands, the maximum mortgage amount for a one-family residence has been increased under section 203(b) to 185% of the basic mortgage limit. Accordingly, the combination home and lot limit is $99,900 ($54,000 × 185%). The lot limit is $24,975 ($13,500 × 185%).

*Part II. Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits*

MORTGAGE LIMITS

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| **Region I—HUD Field Office** | | | | |
| Bangor Office: | | | | |
| Lewiston-Auburn, ME MSA: Androscoggin County | $117,650 | $132,500 | $160,950 | $185,750 |
| Portland, ME MSA: Cumberland County | 111,050 | 125,000 | 151,850 | 175,250 |
| Portsmouth-Dover-Rochester, NH–ME MSA: York County, ME | 101,250 | 114,000 | 138,000 | 160,500 |
| Other areas: | | | | |
| Kennebec County | 74,100 | 83,450 | 101,400 | 117,000 |
| Knox County and Sagadahoc County | 99,750 | 112,350 | 136,500 | 157,500 |
| Burlington Office: | | | | |
| Burlington, VT MSA: | | | | |
| Chittenden County | 120,650 | 135,850 | 165,100 | 190,500 |
| Franklin County and Grand Isle County | 118,750 | 133,750 | 162,500 | 187,500 |
| Other Areas: | | | | |
| Addison County | 89,200 | 100,450 | 122,050 | 140,850 |
| Bennington County | 81,700 | 92,000 | 111,800 | 129,000 |
| Lamoille County | 80,750 | 90,950 | 110,500 | 127,500 |
| Orange County | 87,400 | 98,400 | 119,600 | 138,000 |
| Rutland County | 97,850 | 110,200 | 133,900 | 154,500 |
| Washington County | 90,000 | 101,300 | 122,650 | 142,650 |
| Windham County | 99,750 | 112,350 | 136,500 | 157,500 |
| Windsor County | 101,250 | 114,000 | 138,000 | 160,500 |
| Manchester Office: | | | | |
| Portsmouth-Dover-Rochester, NH–ME MSA: | | | | |
| Rockingham County (Part) | 124,875 | 140,600 | 170,200 | 197,950 |
| Strafford County | 101,250 | 114,000 | 138,000 | 160,500 |
| Manchester, NH PMSA: | | | | |
| Hillsborough County (Part) | 124,875 | 140,600 | 170,200 | 197,950 |
| Merrimack County (Part) | | | | |
| Nashua, NH PMSA: | | | | |
| Hillsborough County (Part) | 124,875 | 140,600 | 170,200 | 197,950 |
| Rockingham County (Part) | | | | |
| Other Areas: | | | | |
| Belknap County | 104,500 | 117,700 | 143,000 | 165,000 |
| Cheshire County | 104,500 | 117,700 | 143,000 | 165,000 |
| Grafton County | 114,000 | 128,400 | 156,400 | 180,000 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Hartford Office: | | | | |
| State of Connecticut | 124,875 | 140,600 | 170,200 | 197,950 |
| Boston Office: | | | | |
| State of Massachusetts | 124,875 | 140,600 | 170,200 | 197,950 |
| Providence Office: | | | | |
| State of Rhode Island | 124,875 | 140,600 | 170,200 | 197,950 |
| **Region II—HUD Field Office** | | | | |
| Albany Office: | | | | |
| Albany, NY MSA: Albany County, Greene County, Montgomery County, Rensselaer County, Saratoga County, and Schenectady County | 120,000 | 135,150 | 164,200 | 189,450 |
| Binghamton, NY MSA: Broome County and Tioga County | 124,875 | 140,600 | 170,200 | 197,950 |
| Poughkeepsie, NY MSA: Dutchess County | 124,875 | 140,600 | 170,200 | 197,950 |
| Syracuse, NY MSA: Madison County, Onondaga County, and Oswego County | 91,950 | 103,550 | 125,800 | 145,150 |
| Utica-Rome, NY MSA: Herkimer County and Oneida County | 91,150 | 102,650 | 124,700 | 143,900 |
| Other areas: | | | | |
| Columbia County | 90,250 | 101,650 | 123,500 | 142,500 |
| Sullivan County | 76,000 | 85,600 | 104,000 | 120,000 |
| Tompkins County | 86,300 | 97,200 | 118,100 | 136,250 |
| Ulster County | 112,550 | 126,750 | 154,050 | 177,750 |
| Warren County | 101,250 | 114,000 | 138,000 | 160,500 |
| Washington County | 76,000 | 85,600 | 104,000 | 120,000 |
| New York Office: | | | | |
| Nassau-Suffolk, NY PMSA: Nassau County and Suffolk County | 124,875 | 140,600 | 170,200 | 197,950 |
| New York, NY PMSA: Bronx County, Kings County, New York County, Putnam County, Queens County, Richmond County, Rockland County, and Westchester County | 124,875 | 140,600 | 170,200 | 197,950 |
| Orange County, NY PMSA: Orange County | 124,875 | 140,600 | 170,200 | 197,950 |
| Newark Office: | | | | |
| Allentown-Bethlehem, PA-NJ MSA (part); Warren County, NJ | 117,600 | 132,450 | 160,900 | 185,650 |
| Bergen-Passaic, NJ PMSA: Bergen County and Passaic County | 124,875 | 140,600 | 170,200 | 197,950 |
| Jersey City, NJ PMSA: Hudson County | 124,875 | 140,600 | 170,200 | 197,950 |
| Middlesex-Somerset-Hunterdon, NJ PMSA: Hunterdon County, Middlesex County, Somerset County | 124,875 | 140,600 | 170,200 | 197,950 |
| Monmouth-Ocean, NJ PMSA (part): Monmouth County, Ocean County | 124,875 | 140,600 | 170,200 | 197,950 |
| Newark, NJ PMSA: Essex County, Morris County, Sussex County, Union County | 124,875 | 140,600 | 170,200 | 197,950 |
| Camden Office: | | | | |
| Atlantic City, NJ MSA: Atlantic County, Cape May County | 124,875 | 140,600 | 170,200 | 197,950 |
| Monmouth-Ocean, NJ PMSA (part): Ocean County | 124,875 | 140,600 | 170,200 | 197,950 |
| Philadelphia, PA-NJ PMSA (part): Burlington County, NJ. Camden County, Gloucester County | 124,875 | 140,600 | 170,200 | 197,950 |
| Trenton, NJ PMSA: Mercer County | 124,875 | 140,600 | 170,200 | 197,950 |
| Vineland-Millville-Bridgeton, NJ PMSA: Cumberland County | 98,700 | 111,150 | 135,050 | 155,800 |
| Wilmington, DE-NJ-MD PMSA (part): Salem County, NJ | 90,300 | 101,700 | 123,550 | 142,550 |
| Buffalo Office: | | | | |
| Bufallo, NY PMSA: Erie County | 90,250 | 101,650 | 123,500 | 142,500 |
| Elmira, NY MSA: Chemung County | 80,300 | 90,400 | 109,850 | 126,750 |
| Niagara Falls, NY PMSA: Niagara Falls County | 76,300 | 85,900 | 104,400 | 120,450 |
| Rochester, NY MSA: Livingston County, Monroe County, Ontario County, Orleans County, Wayne County | 91,900 | 103,500 | 125,750 | 145,100 |
| **Region III—HUD Field Office** | | | | |
| Philadelphia Office: | | | | |
| Allentown-Bethleham, PA-NJ MSA (part): Carbon County, PA, Lehigh County, Northampton County | 124,650 | 140,350 | 170,550 | 196,800 |
| Harrisburg-Lebanon-Carlisle, PA MSA: Cumberland County, Dauphin County, Lebanon County, Perry County | 106,200 | 119,600 | 145,300 | 167,650 |
| Lancaster, PA MSA: Lancaster County | 121,600 | 136,950 | 166,400 | 192,000 |
| Philadelphia, PA-NJ PMSA (part): Bucks County, PA, Chester County, Delaware County, Montgomery County, Philadelphia County | 124,875 | 140,600 | 170,200 | 197,950 |
| Reading, PA MSA: Berks County | 92,250 | 103,900 | 126,200 | 145,650 |
| Scranton—Wilkes-Barre, PA MSA: Columbia County, Lackawanna County, Luzerne County, Monroe County, Wyoming County | 95,600 | 107,650 | 130,800 | 150,900 |
| State College, PA MSA: Centre County | 87,850 | 98,950 | 120,250 | 138,750 |
| Williamsport, PA MSA: Lycoming County | 72,350 | 81,450 | 99,000 | 114,200 |
| York, PA MSA: Adams County, York County | 112,100 | 126,250 | 153,400 | 177,000 |
| Other Areas: Franklin County | 71,250 | 80,250 | 97,500 | 112,500 |
| Baltimore Office: | | | | |
| Baltimore, MD MSA: Baltimore City, Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, Queen Anne's County | 124,875 | 140,600 | 170,200 | 197,950 |
| Hagerstown, MD MSA: Washington County | 97,750 | 110,050 | 133,750 | 154,300 |
| Washington, DC-MD-VA MSA: (part): Charles County MD, Calvert County, Frederick County | 124,875 | 140,600 | 170,200 | 197,950 |
| Wilmington, DE-NJ-MD PMSA (part): Cecil County, MD | 90,300 | 101,700 | 123,550 | 142,550 |
| Other Areas: | | | | |
| Caroline County | 73,800 | 83,100 | 101,000 | 116,550 |
| Kent County | 82,650 | 93,050 | 113,100 | 130,500 |
| St. Mary's County | 104,500 | 117,700 | 143,000 | 165,000 |
| Talbot County | 101,250 | 114,000 | 138,000 | 160,500 |
| Wicomico County | 75,900 | 85,450 | 103,850 | 119,850 |
| Worcester County | 71,250 | 80,250 | 97,500 | 112,500 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Washington, DC Office: | | | | |
| Washington, DC–MD–VA MSA (part): District of Columbia, Montgomery County, MD, Prince Georges County, MD, Alexandria City, VA, Arlington County, VA, Fairfax County, VA, Falls Church City, VA, Loudon County, VA, Manassas City, VA, Manassas Park City, VA, Prince William County, VA | 124,875 | 140,600 | 170,200 | 197,950 |
| Wilmington Office: | | | | |
| Wilmington, DE–NJ–MD PMSA (part): New Castle County, DE | 100,600 | 113,300 | 137,650 | 158,800 |
| Other Areas: | | | | |
| Kent County | 87,850 | 98,950 | 120,250 | 138,750 |
| Sussex County | 91,200 | 102,700 | 124,800 | 144,000 |
| Pittsburgh Office: | | | | |
| Altoona, PA MSA: Blair County | 83,550 | 94,100 | 114,300 | 131,900 |
| Erie, PA MSA: Erie County | 74,250 | 83,600 | 101,600 | 117,200 |
| Johnstown, PA MSA: Cambria County, Somerset County | 74,250 | 83,600 | 101,600 | 117,200 |
| Pittsburgh, PA PMSA: Allegheny County, Fayette County, Washington County,Westmoreland County | 79,000 | 88,950 | 108,100 | 124,700 |
| Richmond Office: | | | | |
| Charlottesville, VA MSA: Albermarle County, Fluvanna County, Greene County, Charlottesville City | 104,500 | 117,700 | 143,000 | 165,000 |
| Johnson City-Kingsport-Bristol, TN–VA MSA (part): Bristol City, VA, Scott County, Washington County | 85,400 | 96,150 | 116,850 | 134,800 |
| Norfolk-VA Beach-Newport News, VA MSA: Chesapeake City, Gloucester County, Hampton City, James City County, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, York County | 120,100 | 135,250 | 164,300 | 189 600 |
| Richmond-Petersburg, VA MSA: Charles City County, Chesterfield County, Colonial Heights City, Dinwiddie County, Goochland County, Hanover County, Henrico County, Hopewell City, New Kent County, Petersburg City, Powhatan County, Prince George County, Richmond City | 105,500 | 118,800 | 144,350 | 166,550 |
| Roanoke, VA MSA: Botetourt County, Roanoke County, Roanoke City, Salem City | 93,750 | 105,550 | 128,250 | 148,000 |
| Washington, DC–MD–VA MAS (part); Stafford County, VA | 124,875 | 140,600 | 170,200 | 197,950 |
| State of Virginia: | | | | |
| Clark County | 90,250 | 101,650 | 123,500 | 142,500 |
| Culpepper County | 84,050 | 94,650 | 115,050 | 132,750 |
| Fauquier County | 124,875 | 140,600 | 170,200 | 197,950 |
| Frederick County | 92,150 | 103,750 | 126,100 | 145,500 |
| Isle of Wight County | 87,400 | 98,400 | 119,600 | 138,000 |
| King George County | 89,300 | 100,550 | 122,200 | 141,000 |
| King William County | 72,200 | 81,300 | 98,800 | 114,000 |
| Louisa County | 70,750 | 79,700 | 96,850 | 111,750 |
| Madison County | 76,000 | 85,600 | 104,000 | 120,000 |
| Montgomery County | 74,550 | 83,950 | 102,050 | 117,750 |
| Orange County | 77,900 | 87,700 | 106,600 | 123,000 |
| Rockingham County | 82,650 | 93,050 | 113,100 | 130,500 |
| Shenandoah County | 80,350 | 90,100 | 109,500 | 126,380 |
| Spotsylvania County/Fredericksburg City | 102,700 | 115,650 | 140,550 | 162,150 |
| Warren County | 83,600 | 94,150 | 114,400 | 132,000 |
| All Other Areas | 68,300 | 76,900 | 93,500 | 107,900 |
| Charleston Office: | | | | |
| Charleston, WV MSA: Kanawha County, Putnam County | 79,800 | 89,850 | 109,200 | 126,000 |
| Huntington–Ashland, WV–KY–OH MSA (part): Cabell County, WV, Wayne County | 82,100 | 92,450 | 112,300 | 129,600 |
| Parkersburg-Marietta, WV–OH MSA (part): Wood County, WV | 75,400 | 84,900 | 103,150 | 119,050 |
| Steubenville-Weirton, WV–OH MSA, Brook County, Hancock County | 74,250 | 83,600 | 101,600 | 117,200 |
| Wheeling, WV–OH MSA (part): Marshall County, WV, Ohio County | 69,550 | 78,350 | 95,150 | 109,800 |
| Other Areas: Jefferson County | 88,600 | 100,000 | 121,550 | 140,250 |
| Albany, GA MSA: Dougherty County, Lee County | 74,250 | 83,600 | 101,600 | 117,200 |
| Atlanta, GA MSA: Barrow County, Butts County, Cherokee County, Clayton County, Cobb County, Coweta County, DeKalb County, Douglas County, Fayette County, Forsyth County, Fulton County, Gwinnett County, Henry County, Newton County, Paulding County, Rockdale County, Spalding County, Walton County | 121,450 | 136,750 | 166,150 | 191,750 |
| Augusta, GA–SC MSA: Columbia County, GA, Richmond County, McDuffie County | 92,250 | 104,450 | 126,900 | 146,400 |
| Chattanooga, TN–GA MSA (part): Catoosa County, GA, Dade County, Walker County | 73,050 | 82,250 | 99,950 | 115,350 |
| Macon-Warner Robins, GA MSA: Bibb County, Houston County, Jones County, Peach County | 86,550 | 97,450 | 118,400 | 136,650 |
| Savannah, GA MSA: Chatham County, Effingham County | 102,900 | 115,850 | 140,800 | 162,450 |
| Other Areas: | | | | |
| Clarke County | 75,500 | 85,050 | 103,350 | 119,250 |
| Dawson County | 68,850 | 77,550 | 94,250 | 108,750 |
| Glynn County | 76,000 | 85,600 | 104,000 | 120,000 |
| Hall County | 85,500 | 96,300 | 117,000 | 135,000 |
| Muscogee County | 75,000 | 84,450 | 102,600 | 118,400 |
| Oconee County | 75,500 | 85,050 | 103,350 | 119,250 |
| Caribbean Office: | | | | |
| Caguas, PR PMSA: Aguas Buenas Municipio, Caguas Municipio, Cayey Municipio, Cidra Municipio, Gurabo Municipio, San Lorenzo Municipio | 93,050 | 104,800 | 127,300 | 146,900 |
| Mayaguez, PR MSA: Anasco Municipio, Cabo Rojo Municipio, Hormigueros Municipio, Mayaguez Municipio, San German Municipio | 79,650 | 89,700 | 109,000 | 125,800 |
| Ponce, PR MSA: Juana Diaz Municipio, Ponce Municipio | 81,700 | 92,000 | 111,800 | 129,000 |
| San Juan, PR PMSA: Barceloneta Municipio, Bayamon Municipio, Canovanas Municipio, Carolina Municipio, Catano Municipio, Corozal Municipio, Dorado Municipio, Fajardo Municipio, Florida Municipio, Guaynabo Municipio, Humacao Municipio, Juncos Municipio, Las Piedras Municipio, Loiza Municipio, Luquillo Municipio, Manati Municipio, Naranjito Municipio, Rio Grande Municipio, San Juan Municipio, Toa Alta Municipio, Toa Baja Municipio, Trujillo Alto Municipio, Vega Alta Municipio, Vega Baja Municipio | 93,050 | 104,800 | 127,300 | 146,900 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Virgin Islands: St. Croix, St. Thomas, St. John | 187,300 | 210,950 | 256,300 | 295,700 |
| Columbia Office: | | | | |
| Augusta, GA–SC MSA (part): Aiken County, SC | 92,250 | 104,450 | 126,900 | 146,400 |
| Charleston, SC MSA: Berkeley County, Charleston County, Dorchester County | 93,100 | 104,850 | 127,400 | 147,000 |
| Charlotte-Gastonia-Rock Hill, NC–SC MSA (part): York County, SC | 88,700 | 99,900 | 121,400 | 140,100 |
| Columbia, SC MSA: Lexington County, Richland County | 97,350 | 109,600 | 133,200 | 153,700 |
| Greenville-Spartanburg, SC MSA: Greenville County, Horry County, Pickens County, Spartanburg County | 76,950 | 86,650 | 105,300 | 121,500 |
| Other Areas: | | | | |
| Beaufort County | 94,050 | 105,900 | 128,700 | 148,500 |
| Georgetown County | 81,600 | 91,900 | 111,650 | 128,850 |
| Birmingham Office: | | | | |
| Anniston, AL MSA: Calhoun County | 78,950 | 88,900 | 108,000 | 124,650 |
| Birmingham, AL MSA: Blount County, Jefferson County, Shelby County, St. Clair County, Walker County | 102,700 | 115,650 | 140,500 | 162,150 |
| Florence, AL MSA: Colbert County, Lauderdale County | 77,150 | 86,850 | 105,550 | 121,800 |
| Gadsen, AL MSA: Etowah County | 74,250 | 83,600 | 101,600 | 117,200 |
| Huntsville, AL MSA: Madison County | 95,600 | 107,700 | 130,850 | 151,000 |
| Mobile, AL MSA: Baldwin County, Mobile County | 90,700 | 102,150 | 124,150 | 143,250 |
| Montgomery, AL MSA: Atauga County, Elmore County, Montgomery County | 84,500 | 95,150 | 115,650 | 133,400 |
| Tuscaloosa, AL MSA: Tuscaloosa County | 94,300 | 106,200 | 129,050 | 148,900 |
| Other Areas: | | | | |
| Houston County | 74,100 | 83,450 | 101,400 | 117,000 |
| Morgan County | 79,550 | 89,600 | 108,850 | 125,600 |
| Greensboro Office: | | | | |
| Asheville, NC MSA: Buncombe County | 102,450 | 115,350 | 140,150 | 161,750 |
| Burlington, NC MSA: Alamance County | 80,450 | 90,600 | 110,100 | 127,050 |
| Charlotte-Gastonia-Rock Hill, NC–SC MSA (part): | | | | |
| Mecklenburg County, NC | 108,300 | 121,950 | 148,200 | 171,000 |
| Cabarrus County, Gaston County, Lincoln County, Rowan County, Union County | 97,950 | 110,300 | 134,000 | 154,650 |
| Fayetteville, NC MSA: Cumberland County | 89,450 | 100,700 | 122,400 | 141,200 |
| Greensboro—Winston-Salem—High Point, NC MSA: Davidson County, Davie County, Forsyth County, Guilford County, Randolph County, Stokes County, Yadkin County | 90,650 | 102,100 | 124,000 | 143,100 |
| Raleigh-Durham, NC MSA: Durham County, Franklin County, Orange County, Wake County | 118,550 | 133,500 | 162,200 | 187,150 |
| Wilmington, NC MSA: New Hanover County | 87,550 | 98,600 | 119,800 | 138,200 |
| Other Areas: | | | | |
| Carteret County | 70,300 | 79,150 | 96,200 | 111,000 |
| Craven County | 81,350 | 91,600 | 111,300 | 128,400 |
| Currituck County | 87,850 | 98,950 | 120,250 | 138,750 |
| Dare County | 109,250 | 123,050 | 149,500 | 172,500 |
| Granville County | 72,200 | 81,300 | 98,800 | 114,000 |
| Henderson County | 80,750 | 90,950 | 110,500 | 127,500 |
| Johnston County | 71,250 | 80,250 | 97,500 | 112,500 |
| Moore County | 93,100 | 104,850 | 127,400 | 147,000 |
| Nash County | 76,000 | 85,600 | 104,000 | 120,000 |
| Pitt County | 75,050 | 84,500 | 102,750 | 118,500 |
| Jackson Office: | | | | |
| Biloxi-Gulfport, MS MSA: Hancock County, Harrison County | 84,850 | 95,550 | 116,100 | 133,950 |
| Jackson, MS MSA: Hinds County, Madison County, Rankin County | 94,950 | 106,900 | 129,900 | 149,950 |
| Memphis, TN–AR–MS MSA: Desoto County, MS | 101,250 | 114,000 | 138,000 | 160,500 |
| Pascagoula, MS MSA: Jackson County | 81,800 | 92,100 | 111,900 | 129,150 |
| Other Areas: | | | | |
| Lee County | 76,000 | 85,600 | 104,000 | 120,000 |
| Lowndes County | 70,200 | 79,100 | 96,100 | 110,900 |
| Oktibbeha County | 73,300 | 82,600 | 100,350 | 115,800 |
| Warren County | 80,000 | 90,100 | 109,450 | 126,300 |
| Coral Gables Office: | | | | |
| Ft. Lauderdale-Hollywood-Pompano Beach, FL PMSA: Broward County | 104,500 | 117,700 | 143,000 | 165,000 |
| Ft. Myers, FL MSA: Lee County | 88,150 | 99,250 | 120,600 | 139,150 |
| Ft. Pierce, FL MSA: Martin County | 123,500 | 139,900 | 169,000 | 195,000 |
| Miami-Hialeah, FL PMSA: Dade County | 94,500 | 106,450 | 129,350 | 149,250 |
| West Palm Beach-Boca Raton-Delray Beach, FL MSA: Palm Beach County | 116,550 | 131,250 | 159,450 | 184,000 |
| Other Areas: | | | | |
| Collier County | 100,700 | 113,400 | 137,800 | 159,000 |
| Monroe County | 124,875 | 140,600 | 170,200 | 197,950 |
| Knoxville Office: | | | | |
| Chattanooga, TN–GA MSA (part): Hamilton County, TN, Marion County, Sequatchie County | 73,050 | 82,250 | 99,950 | 115,350 |
| Johnson City-Kingsport-Bristol, TN–VA MSA (part): Carter County, TN, Hawkins County, Sullivan County, Unicoi County, Washington County | 85,400 | 96,150 | 116,850 | 134,800 |
| Knoxville, TN MSA: Anderson County, Blount County, Graninger County, Jefferson County, Knox County, Sevier County, Union County | 96,350 | 108,500 | 131,800 | 152,100 |
| Memphis Office: | | | | |
| Jackson, TN MSA: Madison County | 77,750 | 87,600 | 106,400 | 122,800 |
| Memphis, TN–AR–MS MSA: Shelby County, TN, Tipton County | 101,250 | 114,000 | 138,000 | 160,500 |
| Nashville Office: | | | | |
| Clarksville-Hopkinsville, TN-KY MSA (part): Montgomery County, TN | 76,750 | 86,400 | 105,000 | 121,150 |
| Nashville, TN MSA: Cheatham County, Davidson County, Dickson County, Robertson County, Rutherford County, Sumner County, Williamson County, Wilson County | 101,550 | 114,350 | 138,950 | 160,300 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Other Areas: Maury County | 76,500 | 86,150 | 104,650 | 120,750 |
| Louisville Office: | | | | |
| Cincinnati, OH–KY–IN, PMSA (part): Boone County, KY, Campbell County, Kenton County | 103,750 | 116,850 | 141,950 | 163,800 |
| Clarksville-Hopkinsville, TN–KY MSA (part): Christian County, KY | 76,750 | 86,400 | 105,100 | 121,150 |
| Huntington-Ashland, WV–KY–OH MSA (part): Boyd County, KY, Carter County, Greenup County | 82,100 | 92,450 | 112,300 | 129,600 |
| Lexington-Fayette, KY MSA: Bourbon County, Clark County, Fayette County, Jessamine County, Scott County, Woodford County | 95,000 | 107,000 | 130,000 | 150,000 |
| Louisville, KY–IN MSA (part): | | | | |
| Jefferson County, KY | 91,650 | 103,200 | 125,400 | 144,700 |
| Bullitt County, Oldham County, Shelby County | 86,350 | 97,250 | 118,200 | 136,350 |
| Owensboro, KY MSA: Davies County | 74,250 | 83,600 | 101,600 | 117,200 |
| Orlando Office: | | | | |
| Orlando, FL MSA: Orange County, Osceola County, Seminole County | 88,350 | 99,500 | 120,900 | 139,500 |
| Melbourne-Titusville-Palm Bay, FL MSA: Brevard County | 93,600 | 105,400 | 128,050 | 147,750 |
| Other Areas: | | | | |
| Indian River County | 69,800 | 78,600 | 95,550 | 110,250 |
| St. Lucia County | 75,900 | 85,450 | 103,850 | 119,450 |
| Volusia County | 74,550 | 83,950 | 102,050 | 117,750 |
| Jacksonville Office: | | | | |
| Gainesville, FL MSA: Alachua County, Bradford County | 98,150 | 110,500 | 134,300 | 154,950 |
| Jacksonville, FL MSA: Clay County, Duval County, Nassau County, St. Johns County | 87,850 | 98,950 | 120,250 | 138,750 |
| Panama City, FL MSA: Bay County | 96,750 | 108,950 | 132,350 | 152,750 |
| Pensacola, FL MSA: Escambia County, Santa Rosa County | 91,950 | 103,550 | 125,900 | 145,150 |
| Tallahasse. FL MSA: Gadsden County, Leon County | 106,400 | 119,800 | 145,600 | 168,000 |
| Tampa Office: | | | | |
| Bradenton, FL MSA: Mantee County | 86,650 | 97,550 | 118,550 | 136,800 |
| Lakeland-Winter Haven, FL MSA: Polk County | 91,650 | 103,200 | 125,400 | 144,700 |
| Sarasota, FL MSA: Sarasota County | 119,350 | 134,400 | 163,300 | 188,400 |
| Tampa-St. Petersburg-Clearwater, FL MSA: Hernanda County, Hillsborough County, Pasco County, Pinellas County | 80,750 | 90,950 | 110,500 | 127,500 |
| **Region V—HUD Field Office:** | | | | |
| Chicago Office: | | | | |
| Aurora-Elgin, IL PMSA: Kane County, Kendall County | 124,875 | 140,600 | 170,200 | 197,950 |
| Chicago, IL PMSA: Cook County, DuPage County, McHenry County | 120,500 | 135,700 | 164,850 | 190,250 |
| Davenport-Rock Island-Moline, IA–IL MSA: Henry County, IL, Rock Island County | 72,750 | 81,900 | 99,550 | 114,850 |
| Joliet, IL PMSA: Grundy County, Will County | 107,600 | 121,200 | 147,250 | 169,950 |
| Lake County, IL PMSA: Lake County | 124,875 | 140,600 | 170,200 | 197,950 |
| Rockford, IL MSA: | | | | |
| Boone County, Winnebago County | 74,500 | 83,950 | 102,050 | 117,750 |
| Dekalb County | 77,400 | 87,200 | 106,400 | 122,800 |
| Detroit Office: | | | | |
| Ann Arbor, MI PMSA: Washtenaw County | 99,200 | 100,450 | 122,050 | 140,800 |
| Detroit, MI PMSA (part): | | | | |
| Oakland County | 101,250 | 114,000 | 138,000 | 160,500 |
| Livingston County, Macomb County, Monroe County, St. Clair County, Wayne County | 85,150 | 95,900 | 116,500 | 134,400 |
| Grand Rapids Office: | | | | |
| Grand Rapids, MI PMSA: Kent County, Ottawa County | 75,250 | 84,750 | 102,950 | 118,800 |
| Kalamazoo, MI MSA: Kalamazoo County | 74,400 | 83,750 | 101,800 | 117,450 |
| Lansing-East Lansing, MI MSA: Clinton County, Eaton County, Ingham County | 77,800 | 87,600 | 106,450 | 122,800 |
| Flint Office: | | | | |
| Detroit, MI PMSA (part): Lapeer County | 79,700 | 89,750 | 109,050 | 125,850 |
| Saginaw-Bay City-Midland, MI MSA: Bay County, Midland County, Saginaw County | 72,650 | 81,800 | 99,400 | 114,700 |
| Cleveland Office: | | | | |
| Akron, OH PMSA: Portage County, Summit County | 77,300 | 87,050 | 105,750 | 122,050 |
| Canton, OH MSA: Carroll County, Stark County | 74,450 | 79,650 | 96,800 | 117,550 |
| Cleveland, OH PMSA: Cuyahoga County, Geauga County, Lake County, Medina County | 89,250 | 100,500 | 122,100 | 140,050 |
| Lorain-Elyria, OH PMSA: Lorain County | 82,950 | 93,400 | 113,500 | 130,950 |
| Mansfield, OH MSA: Richland County | 70,950 | 79,900 | 97,050 | 112,000 |
| Toledo, OH MSA: Fulton County, Lucas County, Wood County | 68,900 | 77,603 | 94,250 | 108,750 |
| Springfield Office: | | | | |
| Alton-Granite City, IL PMSA: Jersey County, Madison County | 85,500 | 96,300 | 117,000 | 135,000 |
| Bloomington-Normal, IL MSA: McLean County | 79,500 | 89,500 | 108,750 | 125,500 |
| Champaign-Urbana-Rantoul, IL MSA: Champaign County | 99,950 | 112,600 | 136,800 | 157,850 |
| East St. Louis-Belleville, IL PMSA: Clinton County, St. Clair County | 85,500 | 96,300 | 117,000 | 135,000 |
| Springfield, IL MSA: Menard County, Sangamon County | 74,250 | 83,600 | 101,600 | 117,200 |
| St. Louis, MO–IL PMSA (part): Monroe County, IL | 99,150 | 111,650 | 135,650 | 156,550 |
| Minneapolis-St. Paul Office: | | | | |
| Duluth, MN–WI MSA (part): St. Louis County | 74,250 | 83,600 | 101,600 | 117,200 |
| Fargo-Moorhead, ND–MN MSA (part): Clay County, MN | 99,800 | 112,400 | 136,550 | 157,550 |
| Minneapolis-St. Paul, MN–WI MSA (part): Anoka County, MN, Carver County, Chisago County, Dakota County, Hennepin County, Isanti County, Ramsey County, St. Croix County, Scott County, Washington County, Wright County | 107,600 | 121,150 | 147,200 | 169,850 |
| Rochester, MN MSA: Olmstead County | 106,150 | 119,550 | 145,250 | 167,600 |
| St. Cloud, MN MSA: Benton County, Sherburn County, Stearns County | 87,100 | 98,100 | 119,200 | 137,550 |
| Milwaukee Office: | | | | |
| Appleton-Oshkosk-Neenah, WI MSA: Calument County, Outagamie County, Winnebago County | 84,800 | 95,500 | 116,000 | 133,850 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Duluth, MN–WI MSA (part): Douglas County | 74,250 | 83,600 | 101,600 | 117,200 |
| Eau Claire, WI MSA: Chippewa County, Eau Claire County | 76,250 | 85,500 | 104,300 | 120,350 |
| Green Bay, WI MSA: Brown County | 86,150 | 97,000 | 117,850 | 136,000 |
| Kenosha, WI MSA: Kenosha County | 84,850 | 95,550 | 116,100 | 133,950 |
| La Crosse, WI MSA: La Crosse County | 81,150 | 91,400 | 111,400 | 128,100 |
| Madison, WI MSA: Dane County | 93,300 | 105,050 | 127,650 | 147,300 |
| Milwaukee, WI PMSA: Milwaukee County, Ozaukee County, Washington County, Waukesha County | 92,250 | 103,900 | 126,200 | 145,650 |
| Minneapolis-St. Paul, MN–WI MSA (part): St. Croix County, WI | 107,600 | 121,150 | 147,200 | 169,850 |
| Racine, WI PMSA: Racine County | 85,450 | 96,200 | 116,900 | 134,900 |
| Indianapolis Office: | | | | |
| Anderson, IN MSA: Madison County | 73,950 | 83,250 | 101,150 | 116,750 |
| Bloomington, IN MSA: Monroe County | 84,450 | 95,100 | 115,550 | 133,300 |
| Cincinnati, OH–KY–IN PMSA: Dearborn County, IN | 103,750 | 116,850 | 141,950 | 163,800 |
| Elkhart-Goshen, IN MSA: Elkhart County | 80,250 | 90,400 | 109,850 | 126,750 |
| Fort Wayne, IN MSA: Allen County, Dekalb County, Whitley County | 84,250 | 94,850 | 115,250 | 133,000 |
| Gary-Hammond, IN PMSA: Lake County, Porter County | 80,650 | 90,800 | 110,350 | 127,350 |
| Indianapolis, IN MSA: Boone County, Hamilton County, Hancock County, Hendricks County, Johnson County, Marion County, Morgan County, Shelby County | 96,200 | 108,350 | 131,600 | 151,850 |
| Lafayette, IN MSA: Tippecanoe County | 79,700 | 89,750 | 109,050 | 125,850 |
| Louisville, KY–IN MSA (part): Clark County, IN, Floyd County, Harrison County | 86,350 | 97,250 | 118,200 | 136,350 |
| South Bend-Mishawaka, IN MSA: St. Joseph County | 79,800 | 89,850 | 109,200 | 126,000 |
| Other Areas: | | | | |
| Allen County | 79,650 | 89,700 | 109,000 | 125,750 |
| Bartholomew County | 83,800 | 94,900 | 114,700 | 132,350 |
| Warwick County | 73,150 | 82,350 | 100,100 | 115,500 |
| Columbus, OH MSA: Delaware County, Fairfield County, Franklin County, Licking County, Madison County, Pickaway County, Union County | 89,000 | 100,250 | 121,800 | 140,550 |
| Dayton-Springfield, OH MSA (part): Clark County | 78,750 | 88,650 | 107,750 | 124,300 |
| Huntington-Ashland, WV–KY–OH MSA (part): Lawrence County, OH | 82,100 | 92,450 | 112,300 | 129,600 |
| Lima, OH MSA: Allen County, Auglaize County | 77,400 | 87,150 | 105,850 | 122,150 |
| Parkersburg-Marietta, WV–OH MSA (part): Washington County, OH | 82,900 | 93,350 | 113,400 | 130,850 |
| Steubenville-Weirton, OH–WV MSA: Jefferson County | 74,250 | 83,600 | 101,600 | 117,200 |
| Wheeling, WV–OH MSA (part): Belmont County, OH | 76,500 | 86,150 | 104,650 | 120,750 |
| Cincinnati Office: | | | | |
| Cincinnati, OH–KY–IN PMSA (part): Clermont County, OH, Hamilton County, Warren County | 103,750 | 116,850 | 141,950 | 163,800 |
| Dayton-Springfield, OH MSA (part): Greene County, Miami County, Montgomery County | 78,750 | 88,650 | 107,750 | 124,300 |
| Hamilton-Middletown, OH PMSA: Butler County | 103,750 | 116,850 | 141,950 | 163,800 |
| **Region VI—HUD Field Office** | | | | |
| Dallas Office: | | | | |
| Dallas, TX PMSA (part): | | | | |
| Collin County | 114,950 | 129,450 | 157,300 | 181,500 |
| Dallas County, Rockwall County | 101,250 | 114,000 | 138,000 | 160,500 |
| Fort Worth Office: | | | | |
| Abilene, TX MSA: Taylor County | 86,600 | 97,500 | 118,500 | 136,700 |
| Dallas, TX PMSA (part): Denton County, Ellis County, Kaufman County | 101,250 | 114,000 | 138,000 | 160,500 |
| Ft. Worth-Arlington, TX PMSA: Johnson County, Parker County, Tarrant County, Hood County | 101,250 | 114,000 | 138,000 | 160,500 |
| Killeen-Temple, TX MSA: Bell County, Coryell County | 88,500 | 99,650 | 121,100 | 139,700 |
| Longview-Marshall, TX MSA (part): Gregg County | 81,300 | 91,550 | 111,250 | 128,350 |
| San Angelo, TX MSA: Tom Green County | 80,050 | 90,150 | 109,550 | 126,400 |
| Sherman-Denison, TX MSA: Grayson County | 95,750 | 107,800 | 131,000 | 151,150 |
| Texarkana, TX-Texarkana, AR MSA (part): Bowie County, TX | 76,750 | 86,400 | 105,000 | 121,150 |
| Tyler, TX MSA: Smith County | 85,100 | 95,800 | 116,450 | 127,650 |
| Waco, TX MSA: McLennan County | 86,900 | 97,850 | 118,900 | 137,200 |
| Wichita Falls, TX MSA: Wichita County | 93,900 | 105,800 | 128,550 | 148,300 |
| Houston Office: | | | | |
| Beaumont-Port Arthur, TX MSA: Hardin County, Jefferson County, Orange County | 80,800 | 91,000 | 110,550 | 127,550 |
| Brazoria, TX PMSA: Brazoria County | 90,000 | 101,300 | 122,650 | 142,650 |
| Bryan-College Station, TX MSA: Brazos County | 92,700 | 104,400 | 126,850 | 146,350 |
| Galveston-Texas City, TX PMSA: Galveston County | 124,875 | 140,600 | 170,200 | 197,950 |
| Houston, TX PMSA: Ft. Bend County, Harris County, Liberty County, Montgomery County, Waller County | 90,000 | 101,300 | 122,650 | 142,650 |
| Other Areas: Angelina County | 68,400 | 77,000 | 93,600 | 108,000 |
| Lubbock Office: | | | | |
| Amarillo, TX MSA: Potter County, Randall County | 78,250 | 88,100 | 107,050 | 123,550 |
| Lubbock, TX MSA: Lubbock County | 96,200 | 108,350 | 131,600 | 151,850 |
| Midland, TX MSA: Midland County | 101,250 | 114,000 | 138,000 | 160,500 |
| Odessa, TX MSA: Ector County | 99,750 | 112,350 | 136,500 | 157,500 |
| San Antonio Office: | | | | |
| Austin, TX MSA: Hays County, Travis County, Williamson County | 116,800 | 131,550 | 159,800 | 184,400 |
| Corpus Christi, TX MSA: Nueces County, San Patricio County | 81,450 | 91,750 | 111,450 | 128,600 |
| El Paso, TX MSA: El Paso County | 74,250 | 83,600 | 101,600 | 117,300 |
| Laredo, TX MSA: Webb County | 76,000 | 85,600 | 104,000 | 120,000 |
| San Antonio, TX MSA: Bexar County, Comal County, Guadalupe County | 82,750 | 93,250 | 113,250 | 130,700 |
| Other Areas: | | | | |
| Burnet County | 76,000 | 85,600 | 104,000 | 120,000 |
| Kendall County | 79,500 | 89,500 | 108,750 | 125,500 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Little Rock Office: | | | | |
| Fayetteville-Springdale, AR MSA: Washington County | 74,250 | 83,600 | 101,600 | 117,200 |
| Memphis, TN-AR-MS MSA (part): Crittenden County, AR | 101,250 | 114,000 | 138,000 | 160,500 |
| Little Rock, AR MSA: Faulkner County, Lenoke County, Pulaski County, Saline County | 90,850 | 102,300 | 124,300 | 143,400 |
| Texarkana, TX-Texarkana, AR MSA (part): Miller County, AR | 76,750 | 86,400 | 105,000 | 121,150 |
| Oklahoma City Office: | | | | |
| Lawton, OK MSA: Comanche County | 74,250 | 83,600 | 101,600 | 117,200 |
| Oklahoma City, OK MSA: Canadian County, Cleveland County, Logan County, McClain County, Oklahoma County, Pottawatomie County | 72,800 | 82,000 | 99,600 | 114,950 |
| New Orleans Office: | | | | |
| Baton Rouge, LA MSA: Ascension Parish, East Baton Rouge Parish, Livingston Parish, West Baton Rouge Parish | 76,000 | 85,600 | 104,000 | 120,000 |
| Lake Charles, LA MSA: Calcasieu Parish | 85,900 | 96,750 | 117,500 | 135,600 |
| New Orleans, LA MSA: Jefferson Parish, Orleans Parish, St. Bernard Parish, St. Charles Parish, St. John the Baptist Parish, St. Tammany Parish | 96,500 | 108,650 | 132,050 | 152,350 |
| Lafayette, LA MSA: | | | | |
| Lafayette Parish | 76,000 | 85,600 | 104,000 | 120,000 |
| St. Martin Parish | 74,250 | 83,600 | 101,600 | 117,200 |
| Shreveport Office: | | | | |
| Alexandria, LA MSA: Rapids Parish | 87,950 | 99,050 | 120,350 | 138,850 |
| Longview-Marshall, TX MSA (part): Harrison County, TX | 75,850 | 85,400 | 103,800 | 119,750 |
| Monroe, LA MSA: Ouachita Parish | 82,550 | 92,950 | 112,950 | 130,300 |
| Shreveport, LA MSA: Bossier Parish, Caddo Parish | 89,350 | 100,600 | 122,250 | 141,050 |
| Albuquerque Office: | | | | |
| Albuquerque, NM MSA: Bernalillo County | 102,850 | 115,800 | 140,700 | 162,350 |
| Las Cruces, NM MSA: Don Ana County | 74,250 | 83,600 | 101,600 | 117,200 |
| Other Areas: | | | | |
| Los Alamos County | 107,800 | 121,400 | 147,550 | 170,250 |
| Santa Fe County | 120,650 | 135,850 | 165,100 | 190,500 |
| Sandoval County | 72,150 | 81,300 | 98,750 | 113,950 |
| Valencia County | 76,000 | 85,600 | 104,000 | 120,000 |
| Tulsa Office: | | | | |
| Tulsa, OK MSA: Creek County, Osage County, Rogers County, Tulsa County, Wagoner County | 83,550 | 94,100 | 114,300 | 131,900 |
| **Region VII—HUD Field Office** | | | | |
| Kansas City Office: | | | | |
| Kansas City, KS PMSA: | | | | |
| Johnson County, KS | 93,550 | 105,350 | 128,050 | 147,750 |
| Leavenworth County, Miami County, Wyandotte County | 81,600 | 91,900 | 111,700 | 128,900 |
| Kansas City, MO PMSA: Cass County, MO, Clay County, Jackson County, Lafayette County, Platt County, Ray County | 81,600 | 91,900 | 111,700 | 128,900 |
| Springfield, MO MSA: Christian County, Greene County | 74,250 | 83,600 | 101,600 | 117,200 |
| St. Joseph, MO MSA: Buchanan County | 70,950 | 79,900 | 97,050 | 112,000 |
| St. Louis Office: | | | | |
| Columbia, MO MSA: Boone County | 82,100 | 92,450 | 112,300 | 129,600 |
| St. Louis, MO-IL PMSA (part): Franklin County, MO, Jefferson County, St. Charles County, St. Louis City | 99,150 | 111,650 | 135,650 | 156,550 |
| St. Louis County | 108,800 | 122,550 | 148,850 | 171,800 |
| Des Moines Office: | | | | |
| Cedar Rapids, IA MSA: Linn County | 72,800 | 81,950 | 99,600 | 114,900 |
| Davenport-Rock Island-Moline, IA-IL MSA (part): Scott County, IA | 77,400 | 87,150 | 105,900 | 122,200 |
| Des Moines, IA MSA: Dallas County, Polk County, Warren County | 75,800 | 85,400 | 103,750 | 119,700 |
| Dubuque, IA MSA: Dubuque County | 86,600 | 97,500 | 118,500 | 136,700 |
| Omaha, NE-IA MSA (part): Pottawattamie County, IA | 78,800 | 88,750 | 107,800 | 124,400 |
| Waterloo-Cedar Falls, IA MSA: Black Hawk County, Brewer County | 78,950 | 88,950 | 108,050 | 124,700 |
| Other Areas: Johnson County | 75,900 | 85,450 | 103,850 | 119,850 |
| Omaha Office: | | | | |
| Lincoln, NE MSA: Lancaster County | 80,600 | 90,750 | 110,250 | 127,250 |
| Omaha, NE-IA MSA (part): Douglas County, NE, Sarpy County, Washington County | 78,800 | 88,750 | 107,800 | 124,400 |
| Topeka Office: | | | | |
| Lawrence, KS MSA: Douglas County | 70,775 | 79,700 | 96,850 | 111,750 |
| Topeka, KS MSA: Shawnee County | 85,750 | 96,800 | 117,600 | 135,700 |
| Wichita, KS MSA: Butler County, Harvey County, Sedgwick County | 78,450 | 88,350 | 107,350 | 123,900 |
| **Region VIII—HUD Field Office:** | | | | |
| Denver Office: | | | | |
| Boulder—Longmont, CO PMSA: Boulder County | 117,300 | 132,100 | 160,500 | 185,200 |
| Colorado Springs, CO MSA: El Paso County | 123,400 | 138,950 | 168,850 | 194,800 |
| Denver, CO PMSA: | | | | |
| Arapahoe County | 108,300 | 121,950 | 148,200 | 171,000 |
| Douglas Country | 109,150 | 122,900 | 149,350 | 172,350 |
| Adams County, Denver County, Jefferson County | 102,450 | 115,350 | 140,150 | 161,750 |
| Fort Collins-Loveland, CO MSA: Larimer County | 116,750 | 131,450 | 159,750 | 184,300 |
| Greeley, CO MSA: Weld County | 101,450 | 114,250 | 138,800 | 160,150 |
| Pueblo, CO MSA: Pueblo County | 81,800 | 92,100 | 111,900 | 129,150 |
| Other Areas: | | | | |
| Eagle County | 124,875 | 140,600 | 170,200 | 197,950 |
| Elbert County | 88,900 | 100,100 | 121,650 | 140,350 |
| Garfield County | 88,350 | 99,500 | 120,900 | 139,500 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Grand County | 80,750 | 90,950 | 110,500 | 127,500 |
| Gunnison County | 83,100 | 93,600 | 113,750 | 131,250 |
| Park County | 80,750 | 90,950 | 110,500 | 127,500 |
| Pitkin Country | 90,000 | 101,300 | 122,650 | 142,650 |
| Routt County | 90,000 | 101,300 | 122,650 | 142,650 |
| Summit County | 101,250 | 114,000 | 138,000 | 160,500 |
| Teller County | 80,750 | 90,950 | 110,500 | 127,500 |
| State of Colorado | 71,800 | 80,900 | 98,300 | 113,400 |
| Helena Office: | | | | |
| Billings, MT MSA: Yellowstone County | 83,050 | 93,500 | 113,600 | 131,100 |
| Great Falls, MT: Cascade County | 83,050 | 93,500 | 113,600 | 131,100 |
| State of Montana | 75,500 | 85,050 | 103,350 | 119,250 |
| Salt Lake City Office: | | | | |
| Provo-Orem, UT MSA: Utah County | 99,750 | 112,350 | 136,500 | 157,500 |
| Salt Lake City-Ogden, UT MSA: Davis County, Salt Lake County, Weber County | 92,700 | 104,400 | 126,850 | 146,350 |
| Other Areas: | | | | |
| Cache County | 89,550 | 100,850 | 122,550 | 141,400 |
| Summit County | 124,200 | 139,900 | 169,950 | 196,100 |
| Washington County | 75,900 | 85,450 | 103,850 | 119,850 |
| Casper Office: | | | | |
| Teton County | 91,200 | 102,700 | 124,800 | 144,000 |
| State of Wyoming | 75,000 | 84,000 | 102,500 | 118,000 |
| Fargo Office: | | | | |
| Fargo-Moorhead, ND-MN MSA (part): Cass County, ND | 99,800 | 112,400 | 136,550 | 157,550 |
| Grand Forks, ND MSA: Grand Forks County | 101,050 | 113,800 | 138,250 | 159,550 |
| Other Areas: Burleigh County, Morton County | 70,750 | 79,700 | 96,850 | 111,750 |
| Sioux Falls Office: | | | | |
| Rapid City, SD MSA: Pennington County | 75,000 | 84,000 | 102,500 | 118,000 |
| Sioux Falls, SD MSA: Minnehaha County | 85,100 | 95,800 | 116,450 | 134,350 |
| Other Areas: | | | | |
| Lincoln County | 85,100 | 95,800 | 116,450 | 134,350 |
| Meade County | 85,100 | 95,800 | 116,450 | 134,350 |
| **Region IX—HUD Field Office:** | | | | |
| Los Angeles Office: | | | | |
| Bakersfield, CA MSA: Kern County | 104,850 | 118,050 | 143,450 | 165,550 |
| Los Angeles-Long Beach, CA PMSA: Los Angeles County | 124,875 | 140,600 | 170,200 | 197,950 |
| Oxnard-Ventura, CA PMSA: Ventura County | 124,875 | 140,600 | 170,200 | 197,950 |
| Santa Barbara-Santa Maria-Lampoc, CA MSA: Santa Barbara County | 124,875 | 140,600 | 170,200 | 197,950 |
| Other Areas: San Luis Obispo County | 124,875 | 140,600 | 170,200 | 197,950 |
| San Francisco Office: | | | | |
| Oakland, CA PMSA: Alameda County, Contra Costa | 124,875 | 140,600 | 170,200 | 197,950 |
| Salinas-Seaside-Monterey, CA MSA: Monterey County | 124,875 | 140,600 | 170,200 | 197,950 |
| San Francisco, CA PMSA: Marin County, San Francisco County, San Mateo County | 124,875 | 140,600 | 170,200 | 197,950 |
| San Jose, CA PMSA: Santa Clara County | 124,875 | 140,600 | 170,200 | 197,950 |
| Santa Cruz, CA PMSA: Santa Cruz County | 124,875 | 140,600 | 170,200 | 197,950 |
| Santa Rosa-Petaluma, CA PMSA: Sunoma County | 124,875 | 140,600 | 170,200 | 197,950 |
| Vallejo-Fairfield-Napa, CA PMSA: Napa County, Solano County | 124,875 | 140,600 | 170,200 | 197,950 |
| Other Areas: | | | | |
| Del Norte County | 101,250 | 114,000 | 138,000 | 160,500 |
| Humbolt County, Lake County, San Benito County, Mendocino County | 123,500 | 139,100 | 169,000 | 195,000 |
| Fresno Office: | | | | |
| Fresno, CA MSA: Fresno County | 117,600 | 132,450 | 160,900 | 185,650 |
| Modesto, CA MSA: Stanislaus, County | 112,650 | 126,850 | 154,150 | 177,850 |
| Visalia-Tulare-Porterville, CA MSA: Tulare County | 101,250 | 114,000 | 138,000 | 160,500 |
| Other Areas: | | | | |
| Kings County | 101,250 | 114,000 | 138,000 | 160,500 |
| Madera County, Mariposa County, Merced County | 108,750 | 122,500 | 148,850 | 171,750 |
| Sacramento Office: | | | | |
| Chico, CA MSA: Butte County | 118,750 | 133,750 | 162,500 | 187,500 |
| Redding, CA MSA: Shasta County | 124,875 | 140,600 | 170,200 | 197,950 |
| Sacramento, CA MSA: El Dorado County, Placer County, Sacramento County, Yolo County | 124,875 | 140,600 | 170,200 | 197,950 |
| Stockton, CA MSA: San Joaquin County | 119,150 | 134,200 | 163,000 | 188,100 |
| Yuba City, CA MSA: Sutter County, Yuba County | 101,250 | 114,000 | 138,000 | 160,500 |
| Other Areas: | | | | |
| Alpine County | 101,250 | 114,000 | 138,000 | 160,500 |
| Amador County | 118,750 | 133,750 | 162,500 | 187,500 |
| Calaveras County, Colusa County, Glenn County, Lassen County, Modoc County, Plumas County, Sierra County, Siskiyou County, Tehama County, Trinity County, Tuolumne County | 101,250 | 114,000 | 138,000 | 160,500 |
| Nevada County | 124,875 | 140,600 | 170,200 | 197,950 |
| San Diego Office: | | | | |
| San Diego, CA MSA: San Diego County | 124,875 | 140,600 | 170,200 | 197,950 |
| Other Areas: Imperial County | 101,250 | 114,000 | 138,000 | 160,500 |
| Santa Ana Office: | | | | |
| Anaheim-Santa Ana, CA PMSA: Orange County | 124,875 | 140,600 | 170,200 | 197,950 |
| Riverside-San Bernadino, CA PMSA: Riverside County, San Bernadino County | 124,875 | 140,600 | 170,200 | 197,950 |
| Other Areas: | | | | |
| Inyo County | 98,800 | 111,250 | 135,200 | 156,000 |

MORTGAGE LIMITS—Continued

| Market area designation and local jurisdictions | 1-family and condominium unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Mono County | 75,000 | 84,000 | 102,500 | 118,000 |
| Las Vegas Office: | | | | |
| Las Vegas, NV MSA: Clark County | 104,300 | 117,450 | 142,700 | 164,650 |
| Other Areas: Lincoln County, Nye County (part) | 75,000 | 84,000 | 102,500 | 118,000 |
| Reno Office: | | | | |
| Reno, NV MSA: Washoe County | 124,875 | 140,600 | 170,200 | 197,950 |
| Other Areas: | | | | |
| Carson City County | 95,950 | 108,050 | 131,300 | 151,500 |
| Churchill County | 85,500 | 96,300 | 117,000 | 135,000 |
| Douglas County | 92,600 | 104,300 | 126,750 | 146,250 |
| Lyon County | 77,400 | 87,200 | 105,950 | 122,250 |
| Elko County, Esmeralda County, Eureka County, Humbolt County, Lander County, Mineral County, Nye County (part), Pershing County, Storey County, White Pine County | 80,750 | 90,950 | 110,500 | 127,500 |
| Phoenix Office: | | | | |
| Phoenix, AZ MSA: Maricopa County | 104,450 | 117,600 | 142,900 | 164,900 |
| Other Areas: | | | | |
| Coconino County | 89,300 | 100,550 | 122,200 | 141,000 |
| Pinal County | 82,400 | 92,850 | 112,800 | 130,150 |
| Yavapai County | 87,400 | 98,400 | 119,600 | 138,000 |
| Yuma County | 70,300 | 79,150 | 96,200 | 111,000 |
| Tucson Office: | | | | |
| Tucson, AZ MSA: Pima County | 112,000 | 126,100 | 153,250 | 176,800 |
| Other Areas: Cochise County | 81,750 | 92,050 | 111,850 | 129,050 |
| Honolulu Office: | | | | |
| State of Hawaii | 187,300 | 210,950 | 256,300 | 295,700 |
| Territory of Guam | 142,500 | 160,500 | 195,100 | 225,000 |
| **Region X—HUD Field Office** | | | | |
| Seattle Office: | | | | |
| Skagit County | 85,250 | 96,000 | 116,650 | 134,600 |
| Bellinghan, WA MSA: Whatcom County | 119,900 | 135,050 | 164,100 | 189,350 |
| Bremerton, WA MSA: Kitsap County | 91,200 | 102,700 | 124,800 | 144,000 |
| Olympia, WA MSA: Thurston County | 79,800 | 89,850 | 109,200 | 126,000 |
| Seattle, WA PMSA: King County, Snohomish County | 124,875 | 140,600 | 170,200 | 197,950 |
| Tacoma, WA PMSA: Pierce County | 95,900 | 108,000 | 131,200 | 151,400 |
| Yakima, WA MSA: Yakima County | 83,350 | 93,850 | 114,050 | 131,600 |
| Other Areas: | | | | |
| Callam County | 94,750 | 106,700 | 129,650 | 149,600 |
| Island County | 114,000 | 128,400 | 156,000 | 180,000 |
| Jefferson County | 104,500 | 117,700 | 143,000 | 165,000 |
| Mason County | 71,700 | 80,750 | 98,150 | 113,250 |
| San Juan County | 124,875 | 140,600 | 170,200 | 197,950 |
| Portland Office: | | | | |
| Eugene-Springfield, OR MSA: Lane County | 89,000 | 100,200 | 121,750 | 140,500 |
| Medford, OR MSA: Jackson County | 90,750 | 102,200 | 124,150 | 143,250 |
| Portland, OR PMSA: Clackamas County, Multnomah County, Washington County, Yamhill County | 95,200 | 107,200 | 132,050 | 150,300 |
| Vancouver, WA PMSA: Clark County | 98,300 | 110,700 | 134,550 | 155,250 |
| State of Oregon | 85,200 | 95,950 | 116,600 | 134,550 |
| Anchorage Office: | | | | |
| State of Alaska | 135,000 | 151,950 | 183,950 | 213,950 |
| Spokane Office: | | | | |
| Richland-Kennewick-Pasco, WA MSA: Benton County, Franklin County | 94350 | 106,250 | 129,000 | 148,950– |
| Spokane, WA MSA: Spokane County | 75,350 | 84,850 | 103,100 | 118950 |
| Boise Office: | | | | |
| Boise City, ID MSA: Ada County | 102,150 | 115,050 | 139,750 | 161,250 |
| Other Areas: | | | | |
| Blaine County | 108,300 | 121,950 | 148,200 | 171,000 |
| Bonneville County | 70,300 | 79,150 | 96,200 | 111,000 |
| Kootenai County | 70,300 | 79,150 | 96,200 | 111,000 |
| Latah County | 75,500 | 85,050 | 103,350 | 119,250 |

Date: July 23, 1991

**Arthur J. Hill,**

*Assistant Secretary for Housing, Federal Housing Commissioner.*

[FR Doc. 91–18162 Filed 7–31–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Thursday
August 1, 1991

Part VII

# Department of Transportation

## Research and Special Programs Administration

49 CFR Part 107

**Amendments to the Hazardous Materials Program Procedures; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Part 107**

**[Docket No. HM-207A; Notice No. 91-2]**

**RIN 2137-AC06**

## Amendments to the Hazardous Materials Program Procedures

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted on November 16, 1990, amended the Hazardous Materials Transportation Act of 1975 (HMTA). Section 4 of the HMTUSA amended section 105 of the HMTA to establish a new preemption standard for State, political subdivision, or Indian tribe requirements that concern certain covered subjects. RSPA is requesting comment on how the new standard should be defined, and is also proposing to streamline the preemption determination and waiver of preemption processes.

**DATES:** Comments must be received on or before September 3, 1991.

**ADDRESSES:** Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC; telephone (202) 366-5046. The public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mary M. Crouter, Senior Attorney, Hazardous Materials Safety & Research and Technology Law Division, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590-0001, telephone: (202) 366-4400.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. L. 101-615) was enacted on November 16, 1990. The HMTUSA amended the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801-1813) in many significant respects. RSPA issued a final rule, published on February 28, 1991 (Docket HM-207; 56 FR 8616), to conform its regulations to comply with certain provisions of the HMTUSA amendments. In that final rule, RSPA stated that further rulemaking would be necessary in some areas.

### II. Covered Subjects

Section 4 of the HMTUSA amended section 105 of the HMTA by adding new subsections (a)(4) (A) and (B) to preempt any requirement of a State, political subdivision thereof, or Indian tribe concerning the following subjects if the non-Federal requirement is not substantively the same as any provision of the HMTA or any Federal regulation issued under the HMTA:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

In its February 28, 1991 final rule, RSPA added this new preemption standard to § 107.202 to mirror the statute. RSPA stated that it planned to define the standard "substantively the same" in a future rulemaking, and that is one of the purposes of this notice.

### Proposed Definition of "Substantively the Same"

RSPA is proposing that "substantively the same" be defined as "conforming in every significant respect." Therefore, any State, political subdivision, or Indian tribe law, regulation, order, ruling, provision, or other requirement concerning a covered subject would be considered "substantively the same" as the Federal provision on that subject if the non-Federal requirement conforms in every significant respect to the Federal provision. The following would not be considered significant changes:

(1) Editorial changes to the text of a Federal provision to reflect the non-Federal nature of the entity issuing the requirement (e.g., the phrase "Secretary of Transportation" is replaced by a reference to a municipal official responsible for issuing regulations).

(2) Adopting the Federal requirement as non-Federal law (e.g., a State adopts the Hazardous Materials Regulations as State law).

(3) Editorial changes to a Federal provision that do not change the meaning of the Federal provision (e.g., using the definition of a term as opposed to the term itself).

The proposed definition is in accordance with the Department's own experience and with the intent of Congress, as reflected in the two House reports on the bill which became the HMTUSA. Both House Committees expressed support for uniform Federal and State regulation in certain areas, and endorsed the idea that non-Federal laws that are "different from" or are "not the same as" Federal laws on those subjects should be preempted. Both House reports indicated that "*de minimis*" or "insignificant" amendments or wording changes would not preempt the non-Federal requirement.

A provision concerning preemption of certain covered subjects was included in the Department's own legislative proposal to reauthorize the HMTA. (July 11, 1989 letter from Samuel K. Skinner, Secretary of Transportation, to the Honorable Dan Quayle, President of the Senate.) The Department of Transportation delineated these subject areas as "critical areas of hazardous materials transportation regulation" that should be Federally preempted, unless the non-Federal requirements are "identical" to the Federal requirements.

Congress agreed that these areas should be federally preempted, although the standard for preemption differed among the bills that were considered in the 101st Congress. As reported by the House Committee on Energy and Commerce (Energy Committee), H.R. 3520 would have preempted any non-Federal law concerning a covered subject "which is different from any provision of this Act or any regulation under such provision which concerns such subject."

The Energy Committee stated that the amendments would require "uniform Federal, State, and local laws and regulations in key areas of hazardous materials transportation to promote safety and the free flow of commerce." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 17 (1990).

The Energy Committee also stated that

[T]he phrase "different from any provision of this Act or any regulation under such provision" is intended to create near-uniformity in Federal and non-Federal laws and requirements relating to the subjects listed in section 105(a)(4)(B). While *de minimis* deviations from Federal regulations under the HMTA may be acceptable, the Committee intends that any significant differences from the HMTA or regulations issued thereunder will cause the nonFederal requirement to be preempted.

H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33 (1990).

As reported by the House Committee on Public Works and Transportation (Public Works Committee), H.R. 3520 would have preempted any non-Federal law concerning a covered subject unless the non-Federal law concerning such subject "is the same as the regulation, rule, or standard issued by the Secretary." The Public Works Committee stated that

There is some concern that this mandate may mean that the state law must mirror the Federal statute verbatim. It does not mean that. It means the state law must have the same effect as the Federal law. For example, a state having adopted the Federal regulations as state law obviously is in concert with this provision. If the state changes the wording of the Federal regulation but not the meaning, the state regulation will stay in effect. However, any state law or regulation mandating something different than the Federal law would be subjected to a preemption challenge.

H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. 24 (1990).

The Senate bill, as introduced and reported by the Committee on Commerce, Science, and Transportation, did not contain a comparable preemption provision for covered subjects. However, the final version of S. 2936 was the result of a compromise among both House Committees and the Senate Commerce Committee. S. 2936, which was enacted as Public Law 101-615, contained the "substantively the same" preemption standard for the covered subjects. The term "substantively the same" was not defined in the statute or in any report or floor statement prior to enactment.

RSPA has also examined the ordinary meaning of the words "substantive" and "same." The definition of "substantive" is "belonging to the real nature or essential part of a thing; essential." *Webster's Unabridged Dictionary of the English Language*, 1989 ed., 1418. The definition of "same" includes "being one or identical though having different names, aspects, etc.: *These are the same rules though differently worded.*" *Id.*, 1264.

## III. Preemption Determination and Waiver of Preemption Processes

Section 13 of the HMTUSA amended section 112 of the HMTA by adding a new subsection (c) to provide that any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Secretary of Transportation, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by section 105(a)(4) (covered subjects) or section 105(b) (highway routing) or section 112(a) (all other matters under the HMTA).

Section 13 also amended section 112 by adding a new subsection (d) concerning the administrative waiver of preemption provision. The waiver of preemption provision previously contained in the HMTA was amended to clarify that the Secretary has the discretion to waive preemption upon a determination that the statutory criteria have been met. In the final rule issued February 28, 1991, RSPA amended its previous inconsistency ruling and non-preemption determination processes to be consistent with these amendments to the HMTA.

RSPA will exercise the authority to issue preemption determinations and waivers of preemption under the HMTA, with the exception of matters concerning highway routing of hazardous materials. Preemption determinations and waivers of preemption with respect to highway routing, including radioactive materials transportation, will be the responsibility of the Federal Highway Administration. The Federal Highway Administration will be conducting further rulemaking on this issue.

The HMTUSA also amended section 112 to provide that no applicant for an administrative preemption determination may seek relief with respect to the same or substantially the same issue in any court until the Secretary has taken final action or until 180 days after filing of an application, whichever occurs first. The 180-day time limit "is intended to provide sufficient time for the Secretary to make a final determination of preemption based upon the criteria set forth in the bill. Alternatively, if the Secretary fails to act within the 180-day period, the bill seeks to provide the expeditious and definitive resolution of preemption issues by allowing the affected party to proceed with any available judicial remedies." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990).

In its February 28, 1991 rule, RSPA included this provision in § 107.203(d). Based upon our experience, RSPA is proposing to shorten the process by eliminating the right to appeal the decision of the Associate Administrator for Hazardous Materials Safety to the Administrator of RSPA. The determination of the Associate Administrator would be the final action of the Secretary, and any party to the preemption determination proceeding could seek judicial review of the decision within 60 days after that decision becomes final.

Under the inconsistency ruling process, the RSPA Administrator generally affirmed the decision of the Director of the Office of Hazardous Materials Transportation (now the Associate Administrator for Hazardous Materials Safety) in every case that was appealed to the Administrator. That experience, coupled with the greater certainty that the statutory preemption standards should provide for the Associate Administrator, leads RSPA to believe that an appellate review at the administrative level is unnecessary.

Although the 180-day time frame applies only to the preemption determination process, RSPA is also proposing to eliminate the appellate review from its waiver of preemption process. RSPA's experience under its non-preemption determination process was that only two applications were filed in the 14 years between 1976 and 1990, and there was only one appeal.

RSPA is also proposing to remove from its preemption determination and waiver of preemption regulations any reference to matters concerning highway routing of hazardous materials. As stated above, the Federal Highway Administration has the responsibility for highway routing matters.

## IV. Notice Concerning Pending Applications for Inconsistency Rulings and Non-Preemption Determinations

In its February 28, 1991 final rule, RSPA converted its procedures for inconsistency rulings and non-preemption determinations to procedures for preemption and waiver of preemption determinations. RSPA still has several open proceedings that were begun under the previous administrative processes. Because of the significant changes to the HMTA since those proceedings were begun, RSPA has determined that each of those proceedings should be reevaluated.

There are five inconsistency ruling proceedings where applications have been filed and public notices and

invitations to comment have been published, but no ruling has been issued:

| Docket No. | Applicant | Subject |
|---|---|---|
| IRA-40C | American Trucking Assns., Inc. (ATA) & Natl. Tank Truck Carriers, Inc. (NTTC). | New York City training requirements. |
| IRA-50 | City of Watertown, NY. | Watertown, NY ordinances and NY State statute re hazardous materials transportation. |
| IRA-51 | National Solid Wastes Mgmt. Assn. | Illinois Hazardous Waste Manifest. |
| IRA-52 | Tennessee Public Service Comm. | Tennessee statute re transportation of radioactive materials. |
| IRA-53 | Nalco Chemical Co. | California statute and regulations re flammable and combustible liquids. |

RSPA has decided to notify the applicants in these proceedings and give them the option of either withdrawing their applications or reapplying for a binding ruling under the new preemption determination process. The other parties to a proceeding will be given an additional opportunity to comment if the applicant reapplies for a binding ruling.

There are also two proceedings where inconsistency ruling applications were filed after November 16, 1990, the effective date of the HMTUSA, but no public notices have been published:

| Docket No. | Applicant | Subject |
|---|---|---|
| IRA-54 | SPCMA | City of Santa Clara, CA requirements re railroad tank cars. |
| IRA-55 | SPCMA | Los Angeles County, CA ordinances re rail tank car loading, unloading, and storage, and related fees. |

RSPA has decided to notify the applicants in these proceedings and give them the option of either withdrawing their applications or reapplying for a binding ruling under the new preemption determination process.

There are four inconsistency ruling proceedings where rulings have been issued and appeals have been filed, but not decided:

| Docket No. | Ruling | Applicant | Subject |
|---|---|---|---|
| IRA-40B | IR-23 | ATA & NTTC. | New York City routing and time restrictions. |
| IRA-45 | IR-28 | Yellow Freight System, Inc. | City of San Jose ordinance re haz. materials. |
| IRA-46 | IR-32 | Chemical Waste Transportation Council. | Montevallo, AL ordinance re hazardous waste transportation. |
| IRA-49 | IR-31 | State of Louisiana. | LA statutes/regs adopting 49 CFR 171-180 with respect to rail transportation. |

RSPA has decided that for those proceedings where it is retaining subject matter jurisdiction, it will defer a decision on appeal pending the outcome of this proposed rulemaking on the standard for preemption of certain covered subjects. Applicants and other parties to the proceedings will have a further opportunity to comment if these proceedings are reopened.

There is one pending non-preemption determination proceeding, NPDA-2, concerning New York City permit requirements for certain radioactive materials transportation. In NPDA-2, RSPA issued a ruling (NPD-1; September 12, 1985) and a decision on appeal (December 30, 1986), but the decision was reversed and remanded to RSPA for reconsideration. *City of New York* v. *DOT*, 700 F. Supp. 1294 (S.D.N.Y. 1988). Because the HMTUSA did not change the standards or the administrative process for issuing waivers of preemption, RSPA will continue to conduct this proceeding.

### Rulemaking Analyses

*Executive Order 12291 and DOT Regulatory Policies and Procedures*

RSPA has determined that this rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979). This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted.

*Executive Order 12612*

The HMTUSA provides that State and local requirements concerning certain covered subjects are preempted. This notice merely proposes to implement the specific statutory mandate at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism assessment is not warranted.

*Regulatory Flexibility Act*

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

*Paperwork Reduction Act*

There are no information collection requirements contained in this rule.

*National Environmental Policy Act*

RSPA has concluded that this rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

### List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 107 of title 49, Code of Federal Regulations, is amended as follows:

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

**Authority:** 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1653(d), 1655; 49 App. U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53.

### Subpart C—Preemption

2. In § 107.201, paragraphs (a) and (c) are revised to read as follows:

**§ 107.201 Purpose and scope.**

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act (49 App. U.S.C. 1804 and 1811), or regulations issued thereunder; and

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any

requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act, or regulations issued thereunder.

* * * * *

(c) For purposes of this subpart, "regulations issued under the Act" means the regulations contained in this subchapter and subchapter C of this chapter.

* * * * *

3. Section 107.202 is amended by adding a new paragraph (d) as follows:

**§ 107.202 Standards for determining preemption.**

* * * * *

(d) For purposes of this section, "substantively the same" means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other *de minimis* changes are permitted.

4. In § 107.203, paragraph (a) is revised to read as follows:

**§ 107.203 Application.**

(a) With the exception of highway routing matters covered under section 105(b) of the Act (49 App. U.S.C. 1804), any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by 49 CFR 107.202 (a) or (b).

* * * * *

5. In § 107.209, paragraph (c) is revised to read as follows:

**§ 107.209 Determination.**

* * * * *

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination.

* * * * *

**§ 107.211 [Removed]**

6. Section 107.211 is removed and reserved.

7. In § 107.215, paragraph (a) introductory text is revised to read as follows:

**§ 107.215 Application.**

(a) With the exception of requirements preempted under section 105(b) of the Act (49 App. U.S.C. 1804), any State, political subdivision, or Indian tribe may apply to the Associate Administrator for Hazardous Materials Safety for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted under the Act or the regulations issued under the Act. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

* * * * *

8. In § 107.221, paragraph (c) is revised to read as follows:

**§ 107.221 Determination and order.**

* * * * *

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination.

* * * * *

9. Section 107.223 is revised to read as follows:

**§ 107.223 Timeliness.**

If the Associate Administrator fails to take action on the application within 90 days of serving the notice required by § 107.219(d), the applicant may treat the application as having been denied in all respects.

**§ 107.225 [Removed]**

10. Section 107.225 is removed and reserved.

Issued in Washington, DC, on July 24, 1991, under authority delegated in 49 CFR 1.53.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 91–18051 Filed 7–31–91; 8:45 am]

BILLING CODE 4910–60–M

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| Library | 523-5240 |
| Privacy Act Compilation | 523-3187 |
| Public Laws Update Service (PLUS) | 523-6641 |
| TDD for the hearing impaired | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, AUGUST

36723-36996.....1

## CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List July 30, 1991**

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| August 1 | August 16 | September 3 | September 16 | September 30 | October 30 |
| August 2 | August 19 | September 3 | September 16 | October 1 | October 31 |
| August 5 | August 20 | September 4 | September 19 | October 4 | November 4 |
| August 6 | August 21 | September 5 | September 20 | October 7 | November 4 |
| August 7 | August 22 | September 6 | September 23 | October 7 | November 5 |
| August 8 | August 23 | September 9 | September 23 | October 7 | November 6 |
| August 9 | August 26 | September 9 | September 23 | October 8 | November 7 |
| August 12 | August 27 | September 11 | September 26 | October 11 | November 12 |
| August 13 | August 28 | September 12 | September 27 | October 15 | November 12 |
| August 14 | August 29 | September 13 | September 30 | October 15 | November 12 |
| August 15 | August 30 | September 16 | September 30 | October 15 | November 13 |
| August 16 | September 3 | September 16 | September 30 | October 15 | November 14 |
| August 19 | September 3 | September 18 | October 3 | October 18 | November 18 |
| August 20 | September 4 | September 19 | October 4 | October 21 | November 18 |
| August 21 | September 5 | September 20 | October 7 | October 21 | November 19 |
| August 22 | September 6 | September 23 | October 7 | October 21 | November 20 |
| August 23 | September 9 | September 23 | October 7 | October 22 | November 21 |
| August 26 | September 10 | September 25 | October 10 | October 25 | November 25 |
| August 27 | September 11 | September 26 | October 11 | October 28 | November 25 |
| August 28 | September 12 | September 27 | October 15 | October 28 | November 26 |
| August 29 | September 13 | September 30 | October 15 | October 28 | November 27 |
| August 30 | September 16 | September 30 | October 15 | October 29 | November 29 |