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# federal register

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# federal register

Tuesday
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**WHO:** The Office of the Federal Register.

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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC
**(two briefings)**

**WHEN:** July 15 at 9:00 am and 1:30 pm

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**Electronic Bulletin Board**
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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# Presidential Documents

Title 3—

The President

Proclamation 6576 of July 1, 1993

## National Youth Sports Program Day, 1993

By the President of the United States of America

A Proclamation

The National Youth Sports Program (NYSP) provides economically disadvantaged children between the ages of 10 through 16 opportunities to earn and learn self-respect through a comprehensive sports and educational instruction program. Today, in its 25th year, the NYSP serves more than 69,000 young people at 173 colleges and universities in 44 States and the District of Columbia.

The children who participate in the program receive supervised training in sport competitions, personal health care, proper nutrition, and free medical and follow-up examinations. They obtain information on drug and alcohol abuse and are taught about good study habits. Career and educational opportunities in math and science are also offered. In addition to the benefits provided to the children, the NYSP enables staff at the participating institutions to become involved in their communities and in providing solutions to community problems.

For more than 25 years, the NYSP has worked to develop effective partnerships with several Federal agencies and departments and with the Nation's colleges and universities acting through the National Collegiate Athletic Association. These unique partnerships have allowed Federal funds to be used to provide direct services for youth, have enabled institutions to contribute their facilities and personnel, and have permitted public and private businesses to donate equipment and supplies needed for the children to participate in the program during the summer.

By utilizing competitive sports as a means of expression, it has allowed these children to express their pain and deal with their difficult living conditions in a positive way, rather than in a self-destructive manner. For many of these children, a sense of accomplishment and empowerment has taken the place of despair. I urge all Americans to join me on this special day to celebrate the significant gains that NYSP's 25 years of service has provided to these children.

The Congress, by Senate Joint Resolution 88, has designated July 1, 1993, as "National Youth Sports Program Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 1, 1993, as National Youth Sports Program Day. I call upon all Americans to observe this day by demonstrating their respect for all those individuals who participate so successfully in these programs and by showing gratitude for those who unselfishly share their experiences, skills, and talents with the disadvantaged youths who participate in NYSP activities across the country.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93–16038
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# Rules and Regulations

Federal Register
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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 Parts 230 and 250

RIN 3206–AA66

### Organization of the Government for Personnel Management; Personnel Management in Agencies

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting in part its proposed regulations to reorganize and consolidate regulations contained in parts 230 and 250. The changes are part of OPM's effort to streamline its regulations and represent a move toward structural consistency between them and title 5 of the United States Code. Specifically, this revision transfers the regulations in subpart B of part 230 relating to the exercise of agency authority to take personnel actions to 5 CFR part 250, subpart A. The regulations in subpart D of part 230 relating to agency authority to take personnel actions in a national emergency are not transferred to subpart B of part 250, as was indicated in the proposed regulations. Changes to these subpart D regulations, if any, will be made as part of a future OPM review of its national security emergency preparedness program regulations and guidance. Consideration will be given in that review to subpart D issues raised in comments on the proposed rule.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Bruce Oland, (202) 606–2458.

**SUPPLEMENTARY INFORMATION:** The changes effected by this final rule were published for comment at 56 FR 21330 on May 8, 1991, and distributed to heads of Departments and Independent Establishments in Federal Personnel Manual Bulletin 250–14 on May 23, 1991. In the 60-day period provided for comment ending on July 8, 1991, OPM received comments from a labor organization, the American Federation of Government Employees (AFGE), and from an agency, the Department of Defense (DOD). OPM also received written comments from the Federal Emergency Management Agency (FEMA) following the close of the formal 60-day comment period.

AFGE suggested that delegation agreements addressed in § 250.102 of the proposed regulations be identified specifically as those which are made between OPM and agency headquarters. While delegations usually are granted at the headquarters level, in some situations they may be delegated to a lower level in the agency. Therefore, we have not adopted the suggestion because it would not cover all situations for which these regulations are intended to apply.

AFGE also suggested that § 250.103 be revised by using the wording in the current regulation; namely, that the word "action" be followed by the qualifying phrase "under a delegated agreement" . . . This change is not adopted because OPM's enforcement authority for regulations it administers extends beyond agency actions taken under delegation agreements.

AFGE, DOD, and FEMA suggested several changes to the proposed subpart B of part 250. As noted in the Summary above, these comments will be considered in a future OPM review of its national security emergency preparedness program regulations and guidance, including part 230, subpart D, where the regulations commented on currently reside.

Related guidance in Chapters 230 and 250 of the Federal Personnel Manual also will be revised and updated as part of this effort. Comments and suggestions for improving this FPM guidance are welcome.

### E.O. 12291, Federal Regulation

OPM has 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 it pertains only to the internal management of Federal agencies and does not substantively change existing regulations.

### List of Subjects

*5 CFR Part 230*

Civil defense, Government employees.

*5 CFR Part 250*

Authority delegations (Government agencies), Civil defense; Government employees.

U.S. Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

Accordingly, OPM is amending 5 CFR parts 230 and 250 as follows:

## PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

1. The authority citation for part 230 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

2. In part 230, subpart B is removed and reserved.

## PART 250—PERSONNEL MANAGEMENT IN AGENCIES

3. The authority citation for Part 250 is revised to read as follows:

**Authority:** 5 U.S.C. 1101 note, 1104, 1302, 3301, 3302; E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218.

4. Part 250 is amended by revising subpart A to read as follows:

### Subpart A—Authority for Personnel Actions in Agencies

Sec.

250.101 Standards and requirements for agency personnel actions.
250.102 Delegation agreements.
250.103 Taking corrective action or suspending or withdrawing agency authority.

### Subpart A—Authority for Personnel Actions in Agencies

#### § 250.101 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards and regulations issued by the Office of Personnel Management, the instructions published by OPM in the Federal Personnel Manual, and the provisions of any agreement development between OPM and the

agency in connection with delegation of a specific authority. When a personnel action is being taken as a result of an order of a Court or a settlement agreement, or a decision or order of or a settlement agreement or an arbitral award reached under the labor arbitration process or the rules and regulations of the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or OPM, the agency shall follow the instructions in Federal Personnel Manual Chapter 296, and must comply with all other relevant substantive and documentary requirements, including those applicable to retirement, life insurance, and health benefits.

**§ 250.102 Delegation agreements.**

In certain circumstances, an agency will receive authorities through a delegation agreement developed between the agency and OPM. The agreement will set forth the conditions for application of the delegated authorities. The agreement will include a description of minimum standards of performance and the system of oversight to be used by the agency and by OPM in monitoring the use of each delegated authority.

**§ 250.103 Taking corrective action or suspending or withdrawing agency authority.**

If OPM finds that an agency has taken an action contrary to a law, rule, regulation, or standard which OPM administers, it may require the agency to take corrective action. OPM may suspend or withdraw any authority granted under this chapter to an agency, including any authority granted by delegation agreement, when it finds that the agency has not complied with qualification standards issued by OPM, the instructions published by OPM in the Federal Personnel Manual, or the regulations in this chapter; or that the suspension or withdrawal is in the interest of the service for any other reason. OPM may suspend or revoke a delegation agreement established under § 250.102 at any time, if it judges that the agency is not adhering to the provisions of the agreement.

[FR Doc. 93–15806 Filed 7–2–93; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1435

**RIN 0560–AC14**

### Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule sets forth regulations to implement the provisions of part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), with respect to marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996.

**DATES:** This interim rule is effective June 30, 1993. Comments must be received on or before August 5, 1993, in order to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to the Deputy Administrator for Program Analysis (DAPA), Agricultural Stabilization and Conservation Service (ASCS), room 3090, South Agriculture Building, U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday except holidays, in room 3727, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Barry, Director, Sweeteners Analysis Division, ASCS; telephone: 202–720–3391.

**SUPPLEMENTARY INFORMATION:** As a result of extensive comments on, and changes to, the proposed rule, the Commodity Credit Corporation (CCC) has chosen not to make the proposed rule final but to provide further opportunity for comments. However, CCC has determined that an interim rule should be promulgated in order to permit the immediate implementation of marketing allotments if necessary.

**Executive Order 12291 and Departmental Regulation 1512–1**

This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "major" rule. It has been determined that the provisions of this interim rule may result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States (U.S.)-based enterprises to compete in domestic or export markets.

**Regulatory Flexibility Act**

It has been determined the Regulatory Flexibility Act is applicable to this interim rule. A Final Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular marketing allotment options considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The CCC thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Final Regulatory Impact Analysis describing the options considered in developing this interim rule and the impact of the implementation of each option is available on request from the above-named individual.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

**Federal Assistance Program**

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases; 10.051.

**Paperwork Reduction Act**

The amendments to 7 CFR part 1435 set forth in this interim rule impose information collection and reporting requirements on the public. The information collection requirements have been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The public reporting

burden for these collections of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and computing and reviewing the collection of information.

**Executive Order 12372 and Executive Order 12778**

The programs covered by this interim rule are 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 part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule preempt State law to the extent such laws are inconsistent with the provisions of this interim rule. This interim rule is not retroactive. Before any action may be brought regarding the provisions of this interim rule, the administrative appeal rights set forth at 7 CFR part 780 must be exhausted.

**Statutory Background**

Title IX of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Act"), which was enacted on November 28, 1990, amended subtitle B of title III of the 1938 Act to provide, in a new part VII, under certain circumstances, for the establishment of marketing allotments for sugar and crystalline fructose for fiscal years 1992 through 1996. Section 111 of the Food, Agriculture, Conservation, and Trade Amendments Act of 1991 (the "Technical Corrections Act"), which was enacted on December 13, 1991, amended several portions of the 1938 Act's marketing allotment provisions. Public Law 102–535, which was enacted on October 27, 1992, further amended provisions pertaining to penalties for producers in Louisiana who harvest acreage in excess of proportionate shares.

**Summary of Comments**

A proposed rule to implement the 1938 Act's provisions for sugar marketing allotments was published on March 25, 1993 (58 FR 16126). Forty-two comments were received from interested persons regarding the proposed regulations: 14 from sugar beet grower organizations, 9 from sugar beet refining companies, 4 from members of the cane industry, 3 from farm bureaus, 3 from members of Congress, 3 from the corn sector, 2 from foreign interests, 1 from a sugar beet grower, 1 from a sugar user group, 1 from a sugar trader, 1 signed by 8 beet processing companies, and 1 signed by representatives of the entire cane sugar industry, 2 sugar beet processing companies, and 1 State sugar beet growers' association.

**Discussion of Comments**

1. The major issue addressed in the comments was the 3-factor criteria used to establish the percentage factors for splitting the overall marketing allotment between the cane and beet sectors. Thirty-nine comments dealt with the weights to be assigned to each of the 3 criteria—past marketings, processing capacity, and ability to market. Recommendations for weights varied greatly. Nine comments recommended that "past marketings" should carry the most weight, from 80 to 100 percent, but 6 comments suggested that "past marketings" should be given equal or less weight than the other two criteria. Recommended weights for "ability to market" were 100 percent, 80 percent, 45 percent, 33⅓ percent, and 0 percent. Recommended weights for "processing capacity" were 45 percent, 33⅓ percent, 15 percent, and 0 percent. Six comments favored flexibility in assignment of weights for a variety of reasons, while four comments opposed flexibility.

CCC continues to believe that the weights for the 3-factor criteria provided in the proposed rule—33⅓ percent for each of the 3 criteria—are appropriate for the purposes of the statute. The appropriateness is based on the view that all three components of the U.S. sugar processing industry—sugar beet processors, sugarcane processors, and cane sugar refiners—serve necessary roles. At the same time, Congress did not intend that the industry be rigidly frozen in fixed market shares but intended to allow for the evolutionary growth of competition.

At 100-percent weight for "past marketings", beet sugar's share would be about 51 percent, and cane sugar's share would be about 49 percent. At 100-percent weight for "ability to market, beet sugar's share would rise to 54 percent, and cane sugar's share would drop to around 46 percent. However, the statute does not permit 100-percent weight to any one factor; all 3 factors are required to be used. Equal weights for the 3-factor criteria would provide beet sugar about 53 percent of the overall allotment and cane sugar about 47 percent. Because beet sugar now accounts for some 56 percent of U.S. sugar production, marketing allotments using equal weights would result in surplus beet sugar that cannot be marketed in the United States, whereas cane sugar would be in deficit relative to its allotment. The margin of deficit, if not reassigned, would benefit cane refiners in the form of additional imports above the level of 1.25 million tons, raw value.

2. Recommendations also varied on the definitions for the 3-factor criteria. CCC believes that the definitions of the 3-factor criteria are intended to provide a balance and should be viewed not as isolated categories but as a totality. While "past marketings" from the 1985–89 crops is a fixed quantity, "processing capacity" will vary over time, and "ability to market" provides the most current but changeable criterion.

Five comments wanted "past marketings" to be defined as the average of marketings from the two highest crop years in the base period (1985–89), while one comment suggested a 2-year "weighted" moving average. Two comments favored the average of all the 5 years in the base period, and one recommended an average of the 5 crop years preceding the current crop.

The 1938 Act requires that "past marketings" be defined as the average of marketings from the two highest 1985–89 years for purposes of determining State cane allotments, but it is silent on how the 1985–89 years are to be used for dividing the overall marketing allotment between the beet and cane sectors or for making allocations among processors. CCC proposed to define "past marketings" as the average of the 1985–89 years, excluding the highest and lowest crop-years. CCC continues to believe that such an olympic average is more representative of the 1985–89 period than the average of the two highest crop years or the average of all five years. CCC has no discretion to define past marketings so as to include crop years outside of the statutorily prescribed 1985–89 base period.

Four comments concerned the definition of "processing capacity", with two favoring the highest crop year in the 1985–89 base period, one preferring the highest crop in the most recent 5-year period including the current crop, and another preferring the highest crop in the most recent 3-year period.

CCC believes that the 1985–89 base period has little relevance to current plant capacity and that the inclusion of production for the current crop year would have the tendency to exaggerate capacity. The current crop can be grossly unpredictable, particularly if estimates are made early in the fiscal year. Furthermore, an allowance for the most-up-to-date potential production is already included in the third factor ("ability to market").

One comment wanted to exclude sugar from desugared molasses in the definition of "ability to market".

CCC recognizes that desugaring technology has been developed and implemented. Sugar produced through this new process cannot be ignored any more than sugar produced through older technologies.

3. Twenty-two comments were received regarding allocations of the marketing allotments.

CCC had asked for comments on the sale, lease, or auction of allocation rights. Three comments opposed the auction, sale, or lease of allotments, seven more comments opposed the auction of allotments, and only 5 comments were in favor of any of these three actions.

The disposition of the allocation of a facility closing or curtailing operations was a concern of 3 comments. Their recommendations were (1) transfer the allocation to nearby processors who can service affected sugar beet growers, (2) transfer each grower's production history to other processors in the same State, and (3) divide production history among the entire beet and cane industry rather than one sector.

Under the provisions in the 1938 Act, allocations are not made on a facility basis but rather on a processor basis and allotments are made on the basis of sectors and cane States. The closure of a facility would not immediately affect any of the data used to determine the percentage factors for dividing the overall allotment quantity among the beet sugar and cane sugar sectors or the division of the cane sugar allotment among the five cane sugar States, except to the extent that it reduces the sector's or State's ability to market sugar. Even at the processor level, a plant closing would have no effect on past marketings and would reduce processing capacity after five years, if the former production by the closed facility were not offset by increased production at other facilities owned by the processor. Once a facility is shut down, CCC would have to assess whether the processor's ability to market would be affected, and if the processor were placed in a "deficit" due to the closure of a facility, CCC would reassign the deficit according to the normal procedures.

Two comments recommended that sugar from desugared molasses be given lower priority in allocations and 1 comment suggested that allocations be assigned to molasses desugaring plants rather than to the plant that was the original source of the molasses.

CCC will treat sugar derived from desugaring molasses on the same basis as any other sugar is treated, and its production will affect the allocation of the processor who produces it.

One comment called for allowances for new processors. CCC notes that the sugar marketing allotment provisions of the 1938 Act do not provide for special treatment for new entrants. Such processors will be unable to acquire a past marketings status but may acquire processing capacity and the ability to market sugar.

Regarding a "minimum" allocation, 1 comment opposed any minimum while another comment requested that a minimum allocation be guaranteed so as to permit the financial viability of a company. CCC will allocate allotments according to the criteria mandated by the 1938 Act without providing an absolute guarantee of a minimum allocation to any processor.

4. Several comments pointed out that the proposed rule would require the "payback" of a processor's excess marketings over an allocation by the sector (beet or cane) in the next year when marketing allotments are in effect. CCC accepts that the statute provides for payback by the processor but not by the sector as a whole and has rewritten the regulations accordingly. Since such paybacks would essentially result in a deficit in the year in which they are required, CCC will reassign any payback amounts according to the rules for reassigning deficits in order to avoid shorting the market.

Two comments suggested that the payback penalty for any marketing in excess of an allocation should be absolved if marketing allotments are not in effect in the immediately next fiscal year. However, the 1938 Act explicitly states that such penalty be imposed in the next year allotments are in effect, even if an interval occurs in allotment years.

5. For the definition of "sugar", 5 comments wanted liquid fructose derived from sucrose to be excluded, 2 comments wanted invert sugar to be included in the definition, and 2 wanted invert sugar to be excluded.

CCC's view, based on well-established definitions of sugar and sucrose, is that invert sugar and fructose from sucrose are sugar, rather than sugar products. Sugar products which are not subject to allotment would consist of products, other than sugar, whose majority content is not sucrose or which are not suitable for human consumption. Permitting invert sugar and liquid fructose derived from sucrose to be exempt from marketing allotments would be a circumvention of the purposes of the statute.

6. Seven comments claimed that the proposed timing for a hearing on the allocations was too short. Recommendations ranged from the 5th to the 15th work day after the request for the hearing, and 1 comment wanted a comment period prior to the hearing and another after the hearing. CCC agrees that the proposed timing for a hearing on the allocations was too rigid and has deleted the specific time by which a hearing will be held after the request for such a hearing and will schedule such hearing based upon all relevant factors that exist at that time.

7. There were 6 comments on reassignment of deficits. Three of the comments involved the timing of a processor's certification of a deficit: 2 recommended 45 days prior to the end of the fiscal year, and 1 recommended within 10 days of the allocation.

The proposed rule did not specify, but the 1938 Act states, that the Secretary, from time to time, shall determine whether any processor will be unable to fill its allocation. CCC believes that 45 calendar days is too close to the end of the fiscal year to permit sufficient opportunity for reassignments and the logistical requirements involved. Instead, CCC would assess the data submitted by each sugar processing company together with other USDA information, from time to time, to determine and reassign the deficits to other processors with due consideration of current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors.

8. Some beet processors indicated that, in the event of marketing allotments, imports should not exceed 1.25 million tons. The 1938 Act clearly states, however, that in the event processors have a deficit which cannot be filled by other processors in the same sector (beet or cane), such deficit will be reassigned to imports, without any requirement that imports cannot exceed 1.25 million tons.

9. Two comments questioned the proposed rule's provision that 159,757 short tons of crystalline fructose is the equivalent of 200,000 tons of sugar, raw value (the marketing allotment for crystalline fructose in the event of allotments). CCC has sought to provide latitude for the marketing of domestically manufactured crystalline fructose from corn, by selecting the minimum superior sweetness equivalent of crystalline fructose to refined sugar (a 1.17-to-1.00 ratio), which is based upon well-established scientific tests. CCC had also considered a sweetness equivalence of 1.50-to-1.00 based on the average sweetness of crystalline fructose among different products in which it is used. The comments contend that

crystalline fructose is a premium product to sugar, and that sweetness is only one aspect of crystalline fructose's superiority to sugar. Furthermore, the comments contend that because crystalline fructose is higher priced by a factor of 1.5, crystalline fructose's equivalence to 200,000 tons of raw sugar should be 256,410 tons of crystalline fructose (200,000 × 1.5 / 1.17). However, if crystalline fructose is a premium product to sugar, then less (not more) of crystalline fructose would be equivalent to the sugar quantity of 200,000 tons. Furthermore, the 1.5 factor which is the price premium depends not just on the inherent quality of crystalline fructose relative to sugar but on transient market conditions, including variable competitive relationships among alternative sweeteners.

10. The 3-factor criteria for establishing sugar allotments was also used in the proposed rule for the purpose of establishing allotments of crystalline fructose among U.S. manufacturers. Objections were raised because, unlike sugar, crystalline fructose was not manufactured until 1987 and therefore the 1985–89 base period has limited applicability. CCC agrees and will use the highest year's production in the preceding 5 fiscal years as the basis for establishing the allotments for crystalline fructose manufacturers.

11. Two comments proposed, respectively, that "reasonable carry-over stocks" should be defined as no less than a 14.5 percent stocks-to-use ratio or a moving 5-year stocks-to-consumption average.

CCC will determine what carry-over stocks are deemed "reasonable" based on a comprehensive review of the market. While the proposed, essentially mechanical, procedures might be helpful, they are considered insufficient for a complete evaluation of the market. Therefore CCC does not agree with the proposals.

12. A comment proposed that if marketing allotments are implemented in the third or fourth quarter of a fiscal year, that allotments should also be established for the next fiscal year. However, the 1938 Act requires CCC to review and reestimate the sugar market every quarter and CCC believes it would be premature to establish allotments for the next fiscal year substantially before the current one expires. Furthermore, data for the next fiscal year can be highly conjectural before July.

13. A comment requested that the sugar content in sugar-containing product imports should be estimated and counted in calculating the market allotment import estimate (MAIE). However, the statute does not authorize CCC to include such imports in calculating the MAIE, which is calculated on the basis of domestic production, consumption, and stocks rather than actual imports of sugar.

14. Several comments were made on the definition of "marketing." One suggestion was that if sugar pledged as collateral for a CCC price support loan is redeemed, the sugar should no longer be considered marketed. CCC agrees that the marketing of sugar which had been pledged as collateral for a price support loan and then redeemed would not be counted a second time against the processor's allocation because the processor's allocation would have been charged when the sugar was pledged as collateral. CCC notes that there is no comparable statutory exemption from double counting for sugar pledged as loan collateral and then disposed of in commerce by forfeiture to the CCC.

Three comments proposed a number of sales transactions to define more clearly and specifically what constitutes marketing. CCC recognizes that if marketing allotments are imposed there would be difficulties in resolving futures contracts. Nonetheless, CCC is obliged to use the statutory definition of marketing, which is the sale or other disposition of sugar. Normally, a sale of goods occurs when title to the goods transfers from the seller to the buyer. Generally, under the Uniform Commercial Code, title transfers according to the contract of the parties but no sooner than the time when specific goods are identified to the sales contract and no later than when the goods are accepted by the buyer. Use of the normal commercial understandings of sales will facilitate administration of this program.

15. One comment asked that beet processors be allowed to swap sugar with domestic cane sugar refiners. CCC notes that section 359c(h) of the 1938 Act prohibits using beet sugar to fill the cane sugar allotment or vice versa.

Two comments proposed that a processor with a surplus of beet sugar relative to its allocation should be allowed to market the sugar domestically if an equal quantity of sugar is "swapped" with a cane refinery's export of domestically produced sugar. Such a swap, it is claimed, would not change the domestic sugar supply while permitting sugar to be marketed at lower cost. However, CCC has limited authority, principally related to quarterly reestimates of consumption, production, and stocks, to alter the overall allotment quantity or the beet sugar or cane sugar allotments. Certainly the export of refined cane sugar, which is not even subject to marketing allotments, is not grounds under the 1938 Act for increasing the beet sugar allotment or the allocation of any beet sugar processor. Moreover, control of the sugar supply would be made unduly difficult by such swaps because of a cane refinery's several sources of supply, including tariff-rate quota imports and imports under the re-export program. Therefore, CCC does not agree with the proposal.

16. One comment proposed that, for companies that are not cooperatives, penalties be imposed only on the processor's share, as determined by the producer-processor contract, of the market value of sugar sold in excess of an allocation. The 1938 Act does not provide for the imposition of civil penalties in the manner proposed. Accordingly, the comment is not adopted.

17. The following miscellaneous comments were received but were considered to be outside the limits of this rulemaking or clearly contrary to the provisions of the 1938 Act: (1) For Hawaii, all the processors' allocations should be combined into one State allotment; (2) Proportionate shares should be calculated for sugar beet States; (3) USDA should withdraw the rule and ask Congress to change the law; (4) Processors should not have the right to purchase sugar to fill a marketing allocation; (5) Growers should share in the net revenue from a processor's purchase of sugar to fill an allocation; (6) In order to avoid allotments, imports of sugar products should be restricted; (7) Price support levels should be reduced by 10 percent; (8) Incentives should be made to increase exports of sugar-containing products; (9) In order to avoid forfeitures, the tariff-rate quota amount should be reduced to 1.25 million short tons; (10) Forfeitures in one year should be deducted from the next year's allocation to the processor who forfeited; (11) Allocations of U.S. shortfalls among foreign suppliers should be made on the basis of historical shares; and (12) Marketing controls should be placed on Mexico's producers if the North American Free Trade Agreement becomes effective.

**List of Subjects in 7 CFR Part 1435**

Loan programs (agriculture), Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is amended by adding a new subpart (§§ 1435.500 through 1435.529) as follows:

## PART 1435—SUGAR

### Subpart—Marketing Allotments for Sugar and Crystalline Fructose

Sec.
1435.500 Applicability.
1435.501 Administration.
1435.502 Definitions.
1435.503–1435.506 [Reserved]
1435.507 Annual estimates and quarterly re-estimates.
1435.508 Establishment and suspension of allotments.
1435.509 Overall allotment quantity.
1435.510 Adjustment of overall allotment quantity.
1435.511 Beet sugar and cane sugar allotments.
1435.512 State cane sugar allotments.
1435.513 Allocation of marketing allotments to processors.
1435.514 Reassignment of deficits.
1435.515–1435.519 [Reserved]
1435.520 Sharing processors' allocations with producers.
1435.521 Proportionate shares for producers of sugarcane.
1435.522 Establishment of acreage bases for purposes of proportionate shares.
1435.523 Permanent transfer of acreage base histories for purposes of proportionate shares.
1435.524 Temporary transfer of proportionate shares due to disasters.
1435.525 Adjustments to proportionate shares.
1435.526 Acreage reports for purposes of proportionate shares.
1435.527 Crystalline fructose allotment.
1435.528 Penalties and assessments.
1435.529 Appeals.

**Authority:** 7 U.S.C. 1359aa–1359jj; 15 U.S.C. 714b and 714c.

### Subpart—Marketing Allotments for Sugar and Crystalline Fructose

#### § 1435.500 Applicability.

(a) The regulations of this subpart are applicable to the establishment and allocation of marketing allotments for:

(1) The marketing by processors during fiscal years 1992 through 1996 of sugar processed from domestically produced sugarcane and sugar beets;

(2) The marketing by manufacturers, during fiscal years 1992 through 1996, of crystalline fructose manufactured from corn;

(3) The distribution of the processor's allotment allocation to producers; and

(4) The harvesting of sugarcane by producers subject to proportionate shares.

(b) The regulations of this subpart do not apply to:

(1) The marketing of imported raw or refined sugar or imported crystalline fructose;

(2) The marketing of sugar processed from imported sugarcane or sugar beets;

(3) The marketing of liquid fructose from corn; or

(4) The exportation of sugar or crystalline fructose from the customs territory of the United States.

(c) The provisions of this subpart are applicable throughout the United States, including Puerto Rico and the District of Columbia.

#### § 1435.501 Administration.

The provisions of this subpart shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, ASCS), and shall be carried out in the field by State and county ASC committees (State and county committees), respectively.

(a) State and county committees, and their representatives and employees, do not have authority to modify or waive any provisions of this subpart.

(b) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(c) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, ASCS), or a designee, from determining any questions arising under this subpart or from reversing or modifying any determination made by a State or county committee.

(d) The Executive Vice President, CCC (Administrator, ASCS), or a designee, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of this subpart.

#### § 1435.502 Definitions.

The definitions set forth in this section are applicable throughout this subpart. The definitions contained in parts 718 and 719 of this title and part 1413 of this chapter are also applicable and are incorporated by reference.

*Ability to market* means, for purposes of determining allotments or allocations, the estimated quantity of sugar, raw value, as determined by CCC, that will be produced in the sector or State or by the processor, as appropriate, during the crop year beginning on the July 1st which immediately precedes the fiscal year for which marketing allotments are in effect and such ability to market is being determined.

*Allocation* means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State's cane sugar allotment among the sugarcane processors of that State.

*ASCS* means Agricultural Stabilization and Conservation Service.

*Beet sugar* means sugar, whether or not principally of crystalline structure, which is processed directly or indirectly from domestically produced sugar beets, including sugar produced from sugar beet molasses.

*Beet sugar allotment* means that portion of the overall allotment quantity allocated to sugar beet processors.

*Cane sugar* means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

*Cane sugar allotment* means that portion of the overall allotment quantity allocated to sugarcane processors.

*Cane syrup* means concentrated cane juice from which no sucrose has been extracted.

*Carry-in stocks* means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

*CCC* means the Commodity Credit Corporation.

*Crop year* means the period beginning July 1 and ending June 30 of the following calendar year, with the customary allowance for a continuous harvest that goes beyond June. For example, the "1991 crop" within the context of this subpart means sugar processed from domestically produced sugar beets or sugarcane harvested during the 1991 crop year, starting on July 1, 1991 and ending on June 30, 1992. The "1991 crop" includes sugar processed from molasses or thick juice produced from domestically produced sugar beets or sugarcane harvested during the 1991 crop year.

*Crystalline fructose* means a monosaccharide and reducing sugar, manufactured from field corn, appearing as free-flowing white crystals with the chemical formula $C_6H_{12}O_6$ and molecular weight of 180.16 and meeting the specifications of the *Food Chemicals Codex* (Third Edition, as amended in Third Supplement, 1991) of the National Research Council.

*Crystalline fructose allotment* means the total quantity of crystalline fructose—159,757 tons—that may be marketed by manufacturers of crystalline fructose in any fiscal year in

which marketing allotments are in effect.

*Crystalline fructose manufacturer's allotment* means that portion of the crystalline fructose allotment allocated to a manufacturer of crystalline fructose.

*DASCO* means the Deputy Administrator, State and County Operations, ASCS.

*Deficit* means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the fiscal year in which marketing allotments are in effect.

*Edible molasses* means molasses which is not to be further refined or improved in quality and which is to be distributed for human consumption, either directly or in molasses-containing products.

*Farm* means that entity as defined in § 719.3 of this title, except that when a State is subject to the implementation of proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

*Fiscal year* means the year beginning October 1 and ending the following September 30. For example, fiscal 1993 begins October 1, 1992 and ends September 30, 1993.

*Imports* means sugar originating in foreign countries or areas and entered, or to be entered, into the customs territory of the United States.

*Invert sugar* means a mixture of glucose (dextrose) and fructose (levulose) formed by the hydrolysis of sucrose.

*Liquid sugar* means a direct-consumption sugar which is not principally of crystalline structure and which contains, or which is to be used for the production of any sugars principally not of crystalline structure which contain, soluble nonsugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 percent or less of the total soluble solids. Liquid sugar is exclusive of cane syrup and edible molasses.

*Market* or *Marketing* means the sale or other disposition of sugar or crystalline fructose in commerce in the United States, including, with respect to any integrated processor and refiner, the movement of raw cane sugar into the refining process.

*Molasses* means a thick syrup which is a byproduct of processing sugar beets or sugarcane or of refining raw cane sugar.

*Normal carryover inventory* means sugarcane processors' inventory on hand at the end of the fiscal year, calculated as the previous 5-year-average ratio of carryover inventory to production, multiplied by current estimated production. Normal carryover inventory applies only to Louisiana and is not synonymous with "reasonable ending stocks".

*Overall allotment quantity* means, on a national basis, the total quantity of sugar, raw value, which is processed from domestically produced sugarcane or sugar beets, and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a fiscal year or other period in which marketing allotments are in effect.

*Past marketings* means, for purposes of determining State cane sugar allotments, the average of the two highest years of sugar production during the 1985 through 1989 crop years; and means for all other purposes, the average of production of sugar during the 1985 through 1989 crop years, excluding the highest and lowest years.

*Per-acre yield goal* means the yield level for a State established at not less than the average per-acre yield in the State for the preceding 5 crop years or such other higher yield established by CCC that will ensure an adequate net return per pound to producers in the State.

*Processing capacity* means, for purposes of determining sugar allotments or allocations, the highest crop-year production of sugar, raw value, as determined by CCC, achieved in the sector or State or by the processor, as appropriate, during the 5-year period prior to the fiscal year for which allotments have been established.

*Proportionate share* means the total acreage from which a producer may harvest sugarcane for sugar or seed during any fiscal year or other period in which marketing allotments are in effect.

*Raw sugar* means any sugar, whether or not principally of crystalline structure, which is to be further refined or improved in quality.

*Raw value* of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric or equivalent test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = actual weight × {[(actual degree of polarization − 92) × 0.0175] + 0.93}. For example, for cane sugar testing 92 sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by 0.93; for cane sugar testing more than 92 sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by the figure obtained by adding 0.93 to the result of multiplying 0.0175 by the number of degrees and fractions of a degree of polarization above 92 degrees. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

*Reasonable carryover stocks* means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the end of the fiscal year, as determined by CCC.

*Refined crystalline sugar means* centrifugal, crystalline sugar (including "high-polarity" sugar from raw cane mills, and "soft" or "brown" sugars) which is not to be further refined or improved in quality.

*State* means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

*State cane sugar allotment* means that portion of the cane sugar allotment assigned to Florida, Hawaii, Louisiana, Texas, or Puerto Rico.

*Sucrose* means a disaccharide having the chemical formula $C_{12}H_{22}O_{11}$.

*Sugar* means any grade or type of saccharine product which is processed, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses) and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined crystalline sugar, liquid sugar, edible molasses, sugar syrup, and cane syrup.

*Sugar beet processor* means a person who commercially produces sugar, directly or indirectly, from domestically-produced sugar beets (including sugar produced from sugar beet molasses).

*Sugar products* means products for human consumption, other than sugar, which contain 50 percent or more of sucrose, on a dry weight basis, and which are marketed by a sugar beet processor or sugarcane processor.

In determining sugar subject to marketing allocations, only the sugar

content of such products will be counted against the allocation.

*Sugar syrup* means a direct-consumption sugar with a sucrose or sucrose-equivalent invert sugar content of less than 94 percent of the total soluble solids.

*Sugarcane processor* means a person who commercially processes domestically-produced sugarcane or sugarcane molasses to produce sugar.

*Ton* means a short ton or 2,000 pounds.

*United States* means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

*USDA* means the United States Department of Agriculture.

*U.S. market value* means, for sugarcane, the daily New York No. 14 contract price for raw sugar; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News; and for crystalline fructose, 1.5 times the Midwest refined beet sugar price.

**§§ 1435.503–1435.506 [Reserved]**

**§ 1435.507 Annual estimates and quarterly re-estimates.**

(a) Before the beginning of each of the fiscal years 1993 through 1996 CCC will estimate, and before the beginning of each quarter of such fiscal years CCC will re-estimate, for such fiscal year:

(1) The quantity of sugar that will be consumed in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products);

(2) The quantity of sugar that will provide for reasonable carryover stocks;

(3) The quantity of sugar that will be available for consumption from carry-in stocks;

(4) The quantity of sugar that will be available for consumption from domestically produced sugarcane and sugar beets; and

(5) The quantity of sugar that will be imported for consumption in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), which will be calculated as the difference between:

(i) The sum of the quantity of estimated consumption and reasonable carryover stocks; and

(ii) The quantity of sugar estimated to be available from domestically grown sugarcane and sugar beets and from carry-in stocks.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will be made by using available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, the data supplied in reports submitted pursuant to the reporting requirements set forth in §§ 1435.400 and 1435.402 of this part.

**§ 1435.508 Establishment and suspension of allotments.**

(a) If it is estimated under § 1435.507(a)(5) that imports of sugar for the fiscal year will be less than 1.25 million short tons, raw value, allotments for the marketing of sugar and sugar products will be established for that fiscal year at a level that CCC estimates will result in imports of sugar of not less than 1.25 million short tons, raw value.

(b) An allotment for crystalline fructose will be imposed whenever allotments for the marketing of sugar are established.

(c) Marketing allotments for sugar and for crystalline fructose will be suspended, as CCC determines appropriate, to reflect changes in estimated consumption, stocks, production, or imports based on quarterly re-estimates under section 1435.507(a).

(d) Each determination under this section to establish or suspend marketing allotments will be promptly published in the **Federal Register** and will be accompanied by a statement of the reasons for the determination.

**§ 1435.509 Overall allotment quantity.**

The overall allotment quantity for the fiscal year will be calculated by deducting from the sum of estimated sugar consumption and reasonable carryover stocks:

(a) 1,250,000 short tons, raw value; and

(b) Carry-in stocks.

**§ 1435.510 Adjustment of overall allotment quantity.**

(a) The overall allotment quantity will be adjusted:

(1) As CCC determines appropriate, to reflect changes in estimated consumption, stocks, production, or imports based on quarterly re-estimates under § 1435.507(b); and

(2) To the maximum extent practicable, to avoid the forfeiture of sugar to the CCC.

(b) Each determination to adjust the overall allotment quantity under this section will be promptly published in the **Federal Register** and will be accompanied by a statement of the reasons for the determination.

(c) The allotment for beet sugar, the allotment for cane sugar, the State cane sugar allotments, and the fiscal year allocations of each sugar beet processor and each sugarcane processor will be increased or reduced, as appropriate, to reflect an adjustment of the overall allotment quantity.

(d) If the overall allotment quantity is reduced under paragraph (a)(1) of this section and the sum of the quantity of sugar and sugar products marketed and sugar pledged as collateral for a price support loan by any individual processor, at the time of the reduction, exceeds the processor's reduced allocation, the quantity of excess sugar or sugar products marketed or pledged as collateral will be deducted from the processor's next allocation of an allotment, if any. The exceptions provided for in § 1435.513 shall be applicable in determining whether a processor has exceeded a reduced allocation.

(e) Whenever a processor's allocation is required to be reduced as provided in paragraph (d) of this section, the quantity by which such allocation is reduced will be reassigned using the same procedures as are provided for the reassignment of deficits in § 1435.514.

**§ 1435.511 Beet sugar and cane sugar allotments.**

(a) An allotment for beet sugar and an allotment for cane sugar will be established for each fiscal year that marketing allotments are in effect.

(b) The beet sugar allotment and cane sugar allotment will be equal to the product of multiplying the overall allotment quantity for the fiscal year by the percentage factor established for beet sugar and the percentage factor established for cane sugar, respectively.

(c) Percentage factors will be established on the basis of:

(1) Past marketings of sugar based on the average marketings of beet sugar and cane sugar from the 1985 through 1989 crops, dropping the highest and lowest years;

(2) Processing capacity in the beet and cane sectors; and

(3) The beet and cane sectors' respective ability to market the allotments assigned to each.

(d) Each of the three criteria used to determine the percentage factors specified in paragraph (c) of this section will be weighted equally, or as determined appropriate by CCC for each year that allotments are in effect.

(e) A sugar beet processor who has been allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation, and a sugarcane processor who has been allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

**§ 1435.512 State cane sugar allotments.**

(a) The allotment for cane sugar will be allotted among Florida, Hawaii, Louisiana, Texas and Puerto Rico, based on:

(1) The average of the two highest years of marketings of cane sugar from each State during the 1985 through 1989 crop years;

(2) Processing capacity in each State; and

(3) The ability of processors in each State to market the sugar covered under the allotment assigned to the State.

(b) Each of the three criteria specified in paragraph (a) of this section will be weighted equally, or as determined appropriate by CCC for each year that an allotment is in effect.

(c) Except when deficits are reassigned as provided in § 1435.514, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

**§ 1435.513 Allocation of marketing allotments to processors.**

(a) Whenever marketing allotments are established for a fiscal year under this subpart, sugar beet processors and sugarcane processors will receive marketing allocations for that fiscal year.

(b) Allocations to sugar beet processors will be based on each processor's:

(1) Average of past marketings of beet sugar during the crop years 1985 through 1989, excluding the highest and lowest years,

(2) Processing capacity, and

(3) Ability to market sugar.

(c) Allocation to sugarcane processors of a State cane sugar allotment will be based on each processor's:

(1) Average of past marketings of cane sugar during the crop years 1985 through 1989, excluding the highest and lowest years,

(2) Processing capacity, and

(3) Ability to market sugar.

(d) Each of the three criteria specified in paragraphs (b) and (c) of this section will be weighted equally, or as determined appropriate by CCC for each year that marketing allotments are in effect.

(e) An informal hearing will be held, if requested by interested parties within 5 workdays following the announcement of proposed allocations, to afford all interested persons the opportunity to comment on the proposed allocations. After consideration of comments obtained at the hearing, a final determination on allocations will be announced.

(f) During any fiscal year in which marketing allotments are in effect and allocated to processors, the total of the following shall not exceed the quantity of the allocation of the allotment made to the processor:

(1) The quantity of sugar and sugar products marketed by a processor, and

(2) The quantity of sugar pledged as collateral by the processor for a CCC price-support loan.

(g) Sugar pledged in a fiscal year as collateral for a CCC price-support loan and counted against a processor's allocation of an allotment shall not be counted a second time against the processor's allocation when the sugar is marketed in that fiscal year after having been redeemed.

(h) Paragraph (f) of this section shall not apply to any sale of sugar by a processor to another processor that is made to enable the purchasing processor to fulfill the purchasing processor's allocation of an allotment. Such sales shall be reported to CCC within 2 days of the date of any such sale.

**§ 1435.514 Reassignment of deficits.**

(a) From time to time in each fiscal year that marketing allotments are in effect, CCC will determine whether processors of sugar beets or sugarcane will be able to market sugar covered by the portions of the allotments allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors. Generally, these determinations will be made in July but may be made at any other time in the fiscal year.

(b) If it is estimated that a sugarcane processor will be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) First, be reassigned proportionately to the allocations of other sugarcane processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be assigned to such other processor and taking into account the interests of producers served by the processors;

(2) If the deficit cannot be eliminated after reassignment within the same State, the deficit will be reassigned to the other cane sugar States based on the ability of processors in such States to market the deficit to be reassigned to such States, with the reassigned quantity to each State being allocated among its processors in proportion to the initial allocations of the processors; and

(3) If any portion of the deficit remains after paragraphs (b)(1) and (b)(2) of this section have been implemented, it will be assigned to imports.

(c) If a sugar beet processor is estimated to be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) First, be reassigned proportionately to the allocations of other sugar beet processors depending on the capacity of the other processors to fill the portion of the deficit to be assigned to them and taking into account the interests of producers served by the processors; and

(2) If any portion of the deficit remains after paragraph (c)(1) of this section has been implemented, it will be reassigned to imports.

(d) The fiscal year allocation of each sugar beet processor or sugarcane processor who receives an additional reassigned deficit amount will be increased to reflect the reassignment for that year.

**§§ 1435.515–1435.519 [Reserved]**

**§ 1435.520 Sharing processors' allocations with producers.**

(a) Every sugar beet processor and sugarcane processor shall share its allocation with producers served by the processor in a fair and equitable manner that adequately reflects such producers' production histories.

(b) Whenever allocations of a marketing allotment are established or adjusted, every sugar beet processor and sugarcane processor must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and adequate manner which reflects each producer's production history.

(c) Any producer or processor can request arbitration of a dispute with respect to the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State ASCS office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC, or a designee. Any arbitration will be subject to appeal to the Office of the Administrative Law Judge, USDA.

**§ 1435.521 Proportionate shares for producers of sugarcane.**

(a) Proportionate shares, and the provisions of this section and §§ 1435.522 through 1435.526, shall be applicable only with respect to

sugarcane farms in the State of Louisiana.

(b) In any fiscal year in which marketing allotments are established at the beginning of such fiscal year, CCC will determine whether the production of sugar in the State of Louisiana, in the absence of proportionate shares, will be greater than the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in the State, plus a normal carryover inventory, will exceed the State's allotment for the fiscal year, CCC will establish for each sugarcane-producing farm a proportionate share that limits the acreage of sugarcane that may be harvested on the farm for sugar or seed during the fiscal year that the allotment is in effect.

(c) For purposes of determining proportionate shares for any crop of sugar, CCC will:

(1) Establish the State's per-acre yield goal at a level not less than the average per-acre yield in the State for the preceding five years;

(2) Adjust the per-acre yield goal by the average recovery rate of sugar produced by sugarcane processors in the State;

(3) Convert the State cane sugar allotment, as determined in accordance with § 1435.513 into a State acreage allotment by dividing the State cane sugar allotment by the adjusted per-acre yield goal;

(4) Establish a uniform reduction percentage for the crop by dividing the State acreage allotment by the sum of all adjusted acreage bases in the State as determined under § 1435.522; and

(5) Apply the uniform reduction percentage to the acreage base established for each sugarcane-producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

**§ 1435.522 Establishment of acreage bases for purposes of proportionate shares.**

(a) CCC will establish a sugarcane crop acreage base for each farm subject to proportionate shares as the simple average of the acreage planted and considered planted for harvest for sugar or seed on the farm in each of the five crop years preceding the fiscal year for which proportionate shares are being established. Acreage considered planted shall be determined in accordance with § 1435.524.

(b) In establishing crop acreage bases, CCC will:

(1) Not take into consideration the acreage which producers are prevented from planting.

(2) Will take into consideration:

(i) Acreage planted to sugarcane that fails, and

(ii) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 1413.97 due to participation in the Conservation Reserve Program in accordance with part 704 of this title.

(c) In establishing crop acreage bases, CCC will allow producers who have not previously reported their sugarcane acreage to do so by a date determined and announced by CCC. Late-filed acreage reports will be accepted as determined by DASCO.

(d) The crop acreage base established for the farm shall be used to determine the farm's proportionate share.

(e) The regulations at 7 CFR parts 718 and 719 of this title shall be applicable to this subpart except the reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines.

**§ 1435.523 Permanent transfer of acreage base histories for purposes of proportionate shares.**

(a) A sugarcane producer on a farm may transfer all or a portion of the acreage base history of land owned, operated, or controlled by the producer to any other farm in the State that is owned, operated, or controlled by that producer in accordance with instructions issued by DASCO. The transfer will reduce permanently the transferring farm's sugarcane acreage base history and increase the receiving farm's crop acreage base.

(b) All owners of the farm must agree in writing to the transfer.

(c) Producers may transfer sugarcane acreage base histories in accordance with this section by the date established annually by the State ASC Committee.

**§ 1435.524 Temporary transfers of proportionate shares due to disasters.**

(a) If for reasons beyond the control of a producer on a farm, such producer is unable to harvest an acreage of sugarcane with respect to all or a portion of the proportionate share established for the farm, the Secretary may preserve, for a period of not more than 3 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for one crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 3 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share in accordance with paragraph (b) of this section will be required to:

(1) Initiate the transfer in the county ASCS office where the proportionate shares are established; and

(2) Obtain approval from the transferring county ASC committee.

(d) All transfers made in accordance with this section must be completed by the date established by the State ASC Committee.

**§ 1435.525 Adjustments to proportionate shares.**

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a crop of sugarcane, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable processors in the State to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

**§ 1435.526 Acreage reports for purposes of proportionate shares.**

(a) A report of planted and failed acreage shall be required with respect to farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar or seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by DASCO and shall be filed annually with the county ASC committee by the applicable final reporting date established by DASCO. Such report shall be filed by the farm operator or by the farm owner.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection which may be used to make a determination with respect to:

(1) The existence of the crop;

(2) The use made of the crop;

(3) The lack of crop; or

(4) A disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized

ASCS employee unless the county ASC committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise a report of acreage to change the acreage reported. Revised reports shall be filed in accordance with instructions issued by DASCO and shall be accepted at any time if:

(1) Evidence exists for inspection and determination of:

(i) The existence of the crop;

(ii) The use made of the crop;

(iii) The lack of crop; and

(iv) A disaster condition affecting the crop; and

(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

(g) The provisions of 7 CFR part 718 will apply for field inspections, tolerance, and variance. Assessments for inaccurate acreage reporting will be applied in accordance with § 1435.528.

**§ 1435.527 Crystalline fructose allotment.**

(a) An allotment for crystalline fructose will be imposed, whenever allotments are established for cane and beet sugar, at a level of 159,757 tons of crystalline fructose, during the fiscal year in which marketing allotments are in effect.

(b) An allotment will be allocated among manufacturers of crystalline fructose based on each manufacturer's highest year of production of crystalline fructose during the preceding five fiscal years.

(c) At any time a crystalline fructose allotment is in effect, no manufacturer of crystalline fructose may market crystalline fructose in excess of the manufacturer's allotment.

**§ 1435.528 Penalties and assessments.**

(a) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any sugar beet processor or sugarcane processor who markets sugar or sugar products or pledges sugar as collateral for a price-support loan in excess of the processor's allocation in violation of § 1435.514 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any manufacturer of crystalline fructose who markets crystalline fructose in excess of the manufacturer's marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of crystalline fructose involved in the violation.

(c) In accordance with section 359f(b)(5) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any producer of sugarcane whose farm has been assigned a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm's proportionate share, shall pay to CCC a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer has harvested acreage for sugar or seed in excess of the farm's proportionate share, if the excess sugarcane harvested is:

(1) Processed by a sugarcane processor that does not exceed the marketing allocation of such processor; or

(2) Diverted to a use other than sugar or seed if:

(i) The sugarcane producer requests and pays for a field inspection by CCC, and

(ii) A representative of CCC verifies the disposition of the excess harvest.

(d) Any penalty assessed under paragraph (c) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(e) Any person who files a false or inaccurate acreage report which exceeds tolerance will be subject to an assessment calculated by multiplying the difference between the reported and determined acreage of sugarcane, times the State yield-goal, times 25 percent of the National sugar price-support loan rate, but not more than $5000. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, DASCO may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable in relation to the seriousness of the failure, the producer's good-faith effort to comply fully with such terms and conditions, and the producer's substantial performance.

(f) Any person who knowingly violates any provision of this subpart is subject to the assessment of a civil penalty by CCC of not more than $5,000 for each violation.

**§ 1435.529 Appeals.**

(a) An appeal may be made to the Office of the Administrative Law Judge, USDA, by:

(1) Any sugar beet processor, sugarcane processor, or any other person adversely affected by a decision under paragraphs (a) through (e) of § 1435.513 who disagrees with such decision;

(2) Any producer or any other person adversely affected by a decision under §§ 1435.521, 1435.522, 1435.525 or 1435.528(c) who disagrees with a determination with respect to the establishment or adjustment of proportionate shares or acreage bases or excess acreage harvested; or

(3) Any processor or producer adversely affected by an arbitration decision pursuant to § 1435.520(c) or its review by the Executive Vice President, CCC.

(b) A manufacturer of crystalline fructose who has been determined to have marketed crystalline fructose in excess of the applicable allotment may request review of such determination pursuant to the ASCS appeal procedure set forth at part 780 of this title by filing an appeal with the National Appeals Division.

(c) A sugar beet processor or sugarcane processor who has been determined to have marketed sugar in excess of the assigned allocation may request review of such determination pursuant to the ASCS appeal procedures set forth at part 780 of this title by filing an appeal with the National Appeals Division.

(d) All appeals must be filed within 15 calendar days after the relevant determination is issued. The appeal must be in writing.

Signed the 29th day of June, 1993 in Washington, DC.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–15817 Filed 6–30–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–61–AD; Amdt. 39–8622; 93–13–09]

## Airworthiness Directives: Cessna T210 Series Airplanes Modified by Supplemental Type Certificate SA2231CE or Supplemental Type Certificate SA3203NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna T210 series airplanes equipped with a turbocharged Continental TSIO–520R engine and intercooler installation in accordance with Supplemental Type Certificate (STC) SA2231CE or STC SA3203NM. This action requires inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature. One of the affected airplanes lost engine power at high altitude because hot air from the turbocharger caused the Gates air induction hose to split. The actions specified by this AD are intended to prevent air induction hose failure, which could result in loss of engine power.

EFFECTIVE DATE: August 13, 1993.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Parts needed to accomplish this AD may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710; Telephone (909) 393–0884.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; Telephone (310) 988–5265; Facsimile (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to Cessna T210 series airplanes equipped with a turbocharged Continental TSIO–520R engine and intercooler installation in accordance with STC SA2231CE or STC SA3203NM was published in the **Federal Register** on February 8, 1993 (58 FR 7494). The action proposed to require inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 390 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $135 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $74,100. These figures take into account that none of the affected airplanes have accomplished the required actions.

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

For the reasons discussed above, I certify that this action (1) is not a "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) 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 final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 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:

**93–13–09 Cessna Aircraft Company:** Amendment 39–8622; Docket No. 92–CE–61–AD.

*Applicability:* The following model airplanes (all serial numbers) equipped with a Continental TSIO–520R engine and intercooler installation in accordance with the applicable supplemental type certificate (STC), certificated in any category:

| Model | Modified by STC |
|---|---|
| T210K | SA2231CE |
| T210L | SA2231CE |
| T210M | SA3203NM |
| T210N | SA3203NM |

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

To prevent air induction hose failure, which could result in loss of engine power, accomplish the following:

(a) Visually inspect between the turbocharger and intercooler to determine whether a Gates air induction hose, part number (P/N) 20987 or P/N 21370, is installed. If a Gates hose is installed, prior to further flight, accomplish the following:

(1) Loosen the two AN737–TW clamps and remove the Gates hose.

(2) Install The Aircraftsman hose, P/N MW1118, and tighten the two AN737–TW clamps.

(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, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to

the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may examine any information referred to herein upon request to the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Parts needed as a result of this action may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710.

(e) This amendment (39–8622) becomes effective on August 13, 1993.

Issued in Kansas City, Missouri, on June 29, 1993.

**Barry D. Clements,**

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

[FR Doc. 93–15811 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 92–CE–51–AD; Amendment 39–8621; AD 93–13–08]**

## Airworthiness Directives: Aerostar Aircraft Corporation PA–60–600 (Aerostar 600) and PA–60–700 (Aerostar 700) Series (formerly Piper) Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 92–11–08, which currently requires replacing or upgrading the main landing gear torque links on certain Aerostar Aircraft Corporation (Aerostar) PA–60–600 and PA–60–700 series airplanes. The Federal Aviation Administration (FAA) has received several reports of fatigue failures of the main landing gear torque links that were installed or upgraded in accordance with AD 92–11–08. This action requires replacing these main landing gear torque links with parts of improved design; or repetitively inspecting the existing torque links, and replacing any cracked torque links. The actions specified by this AD are intended to prevent loss of directional control of the airplane during ground operation caused by torque link failure.

**DATES:** Effective August 20, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1993.

**ADDRESSES:** Service information that applies to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455–8872. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; Telephone (206) 227–2589.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Aerostar PA–60–600 (Aerostar 600) and PA–60–700 (Aerostar 700) series airplanes was published in the **Federal Register** on December 14, 1992 (57 FR 58998). The action proposed to require replacing the existing main landing gear torque links with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear). The proposed action would be accomplished in accordance with the Instructions section of Aerostar Service Bulletin No. 746C, dated September 15, 1992.

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

Two commenters suggest that, as an alternative method of compliance, the FAA give the affected airplane operators the option of repetitively inspecting the main landing gear torque links every 100 hours time-in-service (TIS) or at every annual inspection, whichever occurs first. The FAA concurs that an equivalent level of safety could be obtained by allowing repetitive inspections every 100 hours TIS, and has incorporated this option into the proposed AD. Since the condition is caused by airplane operation, the FAA has not included "at the next annual inspection" as a compliance time.

Both of these commenters also suggest that the FAA remind operators of the importance of proper strut inflation. One of these commenters references reports that Aerostar operators have a tendency to over-inflate the main landing gear struts to maintain a level deck angle while the airplane is on the ground, which redistributes forces to the torque link mechanism that are inconsistent with the design. One of these commenters also states that improper use of the hydraulic nose gear steering mechanism could lead to overstressed torque links. The FAA concurs with these statements and has added a NOTE in the proposed AD cautioning against these actions. The FAA has also asked the manufacturer to issue a service letter to address this issue.

Another commenter raises questions as to why another AD requiring mandatory torque link replacement is proposed. His concerns are:

- Why are the affected operators expected to pay for the flight testing of all new and improved versions of the torque link kits?
- What is the benefit outweighing the additional cost for replacement?; or How long will this version of the torque links last before another is issued? and
- What assurance is there that this replacement is reliable and that the prior design flaws have indeed been eliminated?

The FAA took all of these concerns into consideration before developing the proposed AD. The new torque links were developed through careful and thorough loads analysis, materials selection, static testing, and field testing. The FAA has carefully analyzed the failure modes of the previous torque link designs, and the FAA has determined that this torque link design is a permanent replacement, and that the failure modes of the previous design have been eliminated. The FAA has determined that either initial replacement of the torque links, or repetitive inspections of the existing torque links and replacement of any cracked torque links with the improved parts, achieve, as far as the main landing gear torque links are concerned, the safety objective of returning the airplane to its original certification level of safety.

No comments were received on the FAA's determination of the cost to the public, but if the operator chooses to repetitively inspect instead of replacing and no cracks are found, then the initial cost will be substantially lower. However, the long-term cost of repetitive inspections will eventually exceed the one-time cost of replacing the torque links.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for adding the option of repetitively inspecting the torque links, and replacing any cracked torque links, and minor editorial corrections. The FAA has determined that the addition and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 800 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the torque link replacement, and that the average labor rate is approximately $55 an hour. Parts cost approximately $882 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $793,600. The initial cost would be much lower if the operator chose the repetitive inspection option and found no torque link cracks.

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

For the reasons discussed above, I certify that this action (1) is not a "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) 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 final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 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 removing AD 92–11–08, Amendment 39–8258 (57 FR 20742, May 15, 1992), and adding the following new airworthiness directive:

**93–13–08 Aerostar Aircraft Corporation:** Amendment 39–8621; Docket No. 92–CE–51–AD. Supersedes AD 92–11–08, Amendment 39–8258.

*Applicability*: The following model and serial number airplanes, certificated in any category:

| Models | Serial numbers |
|---|---|
| PA–60–600 Aerostar 600. | 60–0001–003 through 60–0933–8161262. |
| PA–60–601 Aerostar 601. | 61–0001–004 through 61–0880–8162157. |
| PA–60–601P Aerostar 601P. | 61P–0157–001 through 61P–0860–8163455. |
| PA–60–602P Aerostar 602P. | 62P–0750–8165001 through 60–8365021. |
| PA–60–700P Aerostar 700P. | 60–8223001 through 60–8423025. |

**Note 1:** The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

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

To prevent loss of directional control of the airplane during ground operation caused by torque link failure, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, accomplish either (1) or (2) below:

(1) Replace the existing main landing gear torque links with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the Instructions section of Aerostar Service Bulletin (SB) No. 746C, dated September 15, 1992.

**Note 2:** Aerostar SB No. 746C, dated September 15, 1992, references the availability of Main Landing Gear Torque Link Replacement Kit No. 765–155 revision G. This kit contains the improved torque links and all hardware necessary to install these links. This kit may be obtained from the manufacturer at the address specified in paragraph (d) of this AD.

(2) Dye penetrant inspect (using FAA-approved methods) the main landing gear torque links for cracks.

(i) If cracks are found, prior to further flight, replace the cracked torque links with improved designed torque links part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the Instructions section of Aerostar SB No. 746C, dated September 15, 1992.

(ii) If no cracks are found, reinspect at intervals not to exceed 100 hours TIS.

(iii) The repetitive inspection requirement is no longer required when both the left and right main landing gear torque links are replaced with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the Instructions section of Aerostar SB No. 746C, dated September 15, 1992. This installation may be accomplished at any time regardless of whether cracks are found during the inspection.

**Note 3:** Operators should ensure that proper strut inflation is maintained as improper strut inflation could put extreme impact upon the torque links. In addition, improper use of the hydraulic nose gear steering mechanism at high speeds could also lead to overstressed torque links.

(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, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(d) The replacement required by this AD shall be done in accordance with Aerostar Service Bulletin No. 746C, dated September 15, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8621) supersedes AD 92–11–08, Amendment 39–8258.

(f) This amendment (39–8621) becomes effective on August 20, 1993.

Issued in Kansas City, Missouri, on June 29, 1993.

**Barry D. Clements,**

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

[FR Doc. 93–15812 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960–None Assigned

## Federal Old-Age, Survivors and Disability Insurance Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which part A of the cardiovascular system listings, found in the appendix to the regulations on determining disability and blindness, will no longer be effective from July 6, 1993, to January 6, 1994. We are also extending the date on which part B of those listings will no longer be effective from December 6, 1993, to January 6, 1994. We have made no revisions in the medical criteria in the cardiovascular system listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments we received on a Notice of Proposed Rulemaking (NPRM) to update the medical criteria contained in part A and part B of the cardiovascular system listings. When we have completed our review, any revised criteria will be published as final regulations.

EFFECTIVE DATE: This final rule will be effective July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (part A), or in the case of a child under the age of 18, impairments that are considered severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness at the third step of the sequential evaluation process for adults and children under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established termination dates ranging from 4 to 8 years for each of the listings for specific body systems. A date of December 6, 1989, was established for the cardiovascular system listings in part A to no longer be effective. A date of December 6, 1993, was established for part B of the cardiovascular system listings to no longer be effective.

The potential program impact of the changes to update the cardiovascular system listings required careful analysis and consideration within the Agency. As our analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the cardiovascular system listings by December 6, 1989. We published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current cardiovascular system listings for a period of 18 months through June 5, 1991. The cardiovascular system listings were again extended an additional 12 months through June 5, 1992, by final regulation published in the **Federal Register** on June 6, 1991 (56 FR 26030), and were extended to January 5, 1993, by final regulation published in the **Federal Register** on June 5, 1992 (57 FR 23945), and to July 6, 1993, by final regulation published in the **Federal Register** on December 29, 1992 (57 FR 61795).

On July 9, 1991, we published an NPRM proposing revisions to the medical criteria contained in parts A and B of the cardiovascular system listings (56 FR 31266), with provisions for a 60-day comment period. The complex issues raised by the numerous comments we received have required extensive analysis and careful consideration. In order to ensure sufficient time for this review, we are extending the date on which the current cardiovascular system listings in part A will no longer be effective for an additional 6 months—from July 6, 1993, to January 6, 1994, and the date on which the part B listings will longer be effective for an additional 1 month—from December 6, 1993, to January 6, 1994.

### Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed ruelmaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the dates on which parts A and B of the cardiovascular system listings will no longer be effective and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, we have determined that use of public comment procedures is unnecessary under the Administrative Procedure Act.

### Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

### Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

### Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; No. 93.807, Supplemental Security Income)

### List of Subjects in 20 CFR Part 404

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

Dated: May 28, 1993.

**Louis D. Enoff,**

*Principal Deputy Commissioner of Social Security.*

Approved: June 23, 1993.

**Donna E. Shalala**

*Secretary of Health and Human Services.*

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

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

1. The authority citation for subpart P of part 404 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.

2. Appendix 1 to subpart P is amended by revising the fourth paragraph of the introductory text to read as follows:

### Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The cardiovascular system (4.00 and 104.00) will no longer be effective on January 6, 1994.

* * * * *

[FR Doc. 93–15840 Filed 7–2–93; 8:45 am]

BILLING CODE 4190–29–M

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## 21 CFR Part 73

## Food and Drug Administration

**[Docket No. 89C–0203]**

## Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl) Phenylamino]Anthraquinone Copolymers; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration is correcting a final rule that appeared in the **Federal Register** of April 5, 1993 (58 FR 17506). The document amended the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (C.I. Reactive Blue 246) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone. The document was published with an incorrect docket number in the heading. This document corrects that error.

**DATES:** Effective May 6, 1993, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by May 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robin Thomas Johnson, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 93–7769, appearing on page 17506 in the **Federal Register** of Monday, April 5, 1993, the following correction is made:

On page 17506, in the first column, the docket number "89C–0203" is corrected to read "90C–0406".

Dated: June 29, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–15781 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Parts 510 and 520

## Animal Drugs, Feeds, and Related Products; Trimethoprin and Sulfadiazine Oral Powder

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Macleod Pharmaceuticals, Inc. The ANADA provides for the use of a generic trimethoprim/sulfadiazine oral powder in feed for control of bacterial infections of horses during the treatment of acute strangles, respiratory tract infections, acute urogenital infections, wound infections, and abscesses.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Francis, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8617.

**SUPPLEMENTARY INFORMATION:** Macleod Pharmaceuticals, Inc., 2600 Canton Ct., Fort Collins, CO 80525, is the sponsor of ANADA 200–033, which provides for the use of a generic trimethoprim/ sulfadiazine oral powder in feed for control of bacterial infections of horses during the treatment of acute strangles, respiratory tract infections, acute urogenital infections, wound infections, and abscesses.

Approval of ANADA 200–033 for Macleod Pharmaceuticals' trimethoprim/ sulfadiazine oral powder (Uniprim™ powder) is as a generic copy of Coopers Animal Health's NADA 131–918 for Tribrissen® 400 oral paste (trimethoprim/sulfadiazine oral paste). The ANADA is approved as of June 11, 1993, and the regulations are amended by adding new § 520. 2613 (21 CFR 520.2613) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, Macleod Pharmaceuticals, Inc., has not previously been listed in 21 CFR 510.600(c) as sponsor of an approved application. That section is amended to add entries for the firm.

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

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects**

*21 CFR Part 510*

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

*21 CFR Part 520*

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

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

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Macleod Pharmaceuticals, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "058711" to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Macleod Pharmaceuticals, Inc., 2600 Canton Ct., Fort Collins, CO 80525. | 058711 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 058711 | Macleod Pharmaceuticals, Inc., 2600 Canton Ct., Fort Collins, CO 80525. |
| * * * * * | |

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 520.2613 is added to read as follows:

**§ 520.2613 Trimethoprim and sulfadiazine powder.**

(a) *Specifications.* Each gram of powder contains 67 milligrams of trimethoprim and 333 milligrams of sulfadiazine.

(b) *Sponsor.* See No. 058711 in § 510.600(c) of this chapter.

(c) *Conditions of use: Horses*—(1) *Dosage.* 3.75 grams of powder per 110 pounds (50 kilograms) of body weight per day.

(2) *Indications for use.* For control of bacterial infections of horses during treatment of acute strangles, respiratory tract infections, acute urogenital infections, wound infections, and abscesses.

(3) *Limitations.* Administer orally in a small amount of feed, as a single daily dose, for 5 to 7 days. Continue therapy for 2 to 3 days after clinical signs have subsided. If no improvement is seen in 3 to 5 days, reevaluate diagnosis. A complete blood count should be done periodically with prolonged use. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 25, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–15778 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 920

### Maryland Regulatory Program; Air Resources; Permitting

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment limits the air protection standards to air pollution attendant to erosion. The proposed amendment also deletes a number of provisions that either are not required by Federal rules or will make the regulations consistent with statutory provisions recently approved by OSM. The amendment is intended to make the Maryland regulations no less effective than the Federal regulations.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robert Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, Suite 3C, Harrisburg, PA 17101; Telephone: (717) 782–4036.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Maryland Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

### I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

### II. Submission of Amendments

By letter dated February 5, 1993, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD–562.00). The amendment changes the provisions of the Code of Maryland Administrative Regulations (COMAR) 08.13.09.27, Air Resources Protection, to require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion. Certain specified fugitive dust control measures are made optional as determined by Maryland. The provisions of COMAR 08.13.09.04, Permit Application Review Procedures, are changed to modify the notification procedures for permit approval and issuance. The provisions pertaining to decisions by the Land Reclamation Committee (LRC) are deleted. Effective April, 1993, COMAR 08.13.09 was recodified as COMAR 08.20.

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16383) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period ended on April 26, 1993.

By letter dated April 26, 1993, Maryland submitted revisions to the amendment to OSM (administrative Record No. MD–562.11). OSM announced receipt of the revisions in the May 21, 1993, **Federal Register** (58 FR 29560) and reopened the public comment period and provided opportunity for a public hearing. The comment period ended on June 21, 1993.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on February 5, 1993, and revised on April 26, 1993. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording

changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*Revisions to Maryland's Regulations That are Substantively Identical to the Corresponding Federal Regulations*

| State regulation | Subject | Federal counterpart |
|---|---|---|
| COMAR 08.13.09.27A, (now 08.20.23.01A) | Air Resources Protection | 30 CFR 816.95(a) |

*Revisions to Maryland's Regulations that are not Substantively Identical to the Corresponding Federal Regulations*

Permit Application Review Procedures

At COMAR 08.13.09.04H(1) (now 08.20.04.08A), Maryland is deleting its existing provision that the Bureau of Mines hold a joint hearing with the Land Reclamation Committee (LRC) if a public hearing is requested. The revised regulation requires that the Bureau schedule a hearing, if requested, in the locality of the proposed operation. The deletion is consistent with the statutory deletion approved by OSM on December 17, 1992 (57 FR 59922). Because the revised regulation is substantively identical to the Federal regulation at 30 CFR 773.13(c)(2)(i), the Director finds it no less effective than its Federal counterpart.

At COMAR 08.13.09.04J(1) (now 08.20.04.11A), Maryland is revising its permit approval regulations to require that if the State decides to approve a permit application, it shall notify the applicant, each person who filed written comments or objections to the application, and each party to the hearing, in writing of its approval of the permit application. Maryland is deleting the requirement that the notification be made by certified mail. There is no Federal counterpart, therefore, the deletion does not render the State program less effective than the Federal regulations. Because the revised regulation is no less effective than the Federal regulation at 30 CFR 773.19(b)(1), which also requires notification of a permit decision, the Director finds it no less effective than its Federal counterpart.

At COMAR 08.13.09.04J(4) (now 08.20.04.11D), Maryland is deleting its current requirement that upon permit issuance, it advertise notice of its decision and provide for an adjudicatory hearing, if requested. The revised regulation requires that upon permit issuance, the State provide written notification of the issuance to OSM. Since the Federal regulations pertaining to permit issuance at 30 CFR 773.19(b) do not require that the regulatory authority advertise notice of its decision, the deletion of the requirement does not render the State program less effective than the Federal regulations. The Federal regulation at 773.19(b)(3) requires that OSM be notified of the permit decision at the same time as the applicant. The Maryland regulation is different in that it would not notify OSM of its decision until after the permit is issued. However, the purpose behind OSM's notification is "for OSM to conduct oversight of a State program." 48 FR 44344, 44371 (September 28, 1983). The later notification by Maryland to OSM still satisfies this purpose because OSM's oversight capacity is not dependent upon notification simultaneous with the applicant's notice. Therefore, so long as Maryland notifies OSM within a reasonable time, the Director finds the amendment to be no less effective than 30 CFR 773.19(b)(3).

*Deletions to Maryland's Regulations*

1. Permit Application Review Procedures

At COMAR 08.13.09.04B(4) (now 08.20.04.02D), Maryland is deleting its existing provision that the State forward copies of a complete permit application to the Water Resources Administration and appropriate Soil Conservation District for review and comments. Also deleted is the provision that the State conduct a technical on-site evaluation with these agencies. The Federal regulations at 30 CFR 773.13 contain no comparable provisions. The Director finds that the proposed deletions do not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04C(2)(e) (now 08.20.04.03B(5)), Maryland is deleting the requirement that an applicant's newspaper advertisement specify that a public hearing will be held on the application. The Federal regulations at 30 CFR 773.13(a)(1) contain no comparable provision. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04G(5) (now 08.20.04.07D), Maryland is deleting the requirement that the State schedule a public hearing as part of the permit review process. The Federal regulations at 30 CFR 773.13(c) require that the regulatory authority hold an informal conference only if an interested party requests one. Maryland satisfies this requirement at COMAR 08.20.04.05A. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04G(5) (now 08.20.04.07E), Maryland is deleting the requirement that the State forward copies of the permit application to certain agencies and public representative members of the LRC. The Federal regulations at 30 CFR 773.13(a)(3) require that the regulatory authority issue written notification indicating the applicant's intention to mine to certain governmental agencies. Maryland satisfies this requirement at COMAR 08.20.04.02C(3). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04g(6) (now 08.20.04.07F), Maryland is deleting the requirements that a site visit for the LRC be scheduled and that the applicant flag or stake all areas to be affected by the proposed mining activity. The Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications contain no comparable provisions. The Director finds that the proposed deletions do not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04H(2)(b) (now 08.20.04.08B(2), Maryland is deleting the requirement that the State publish information regarding a requested public hearing in the Maryland Register. The Federal regulations at 30 CFR 773.13(c)(2)(ii) contain no comparable provision. The Director finds that the

proposed deletion does not render the State program less effective than the Federal regulations.

Maryland is deleting its current regulations at COMAR 08.13.09.04I (now 08.20.04.09) which required that the LRC vote and approve, reject or conditionally approve reclamation plans. The remaining sections are relettered for consistency. The deletion is duplicative of new statutory language approved by OSM on December 17, 1992 (57 FR 59922). The Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At new COMAR 08.13.09.04I(1) (now 08.20.04.10A), Maryland is deleting the requirement that the State complete its review of a permit application within ten days of receipt of the LRC approval of decision on a reclamation plan. The Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(1)(a) (now 08.20.04.11A(1)), Maryland is deleting the requirement that the State's approval notice to the permit applicant contain all written findings required by Regulation .05A (Required Written Findings). The remaining sections are relettered for consistency. The Federal regulations at 30 CFR 773.19(b) pertaining to notification contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(2) (now 08.20.04.11B), Maryland is deleting the requirement that a copy of the permit notice be forwarded to any person who filed a written comment or objection and the Regional Director of the Federal Office of Surface Mining. The remaining sections are renumbered for consistency. The Federal regulations at 30 CFR 773.19(b) require that these entities be notified. Maryland provides for notification at revised COMAR 08.13.09.04J (1) and (4) (now COMAR 08.20.04.11 A and D). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(5) (now 08.20.04.11E), Maryland is deleting the requirement that the State issue a permit within ten days of receipt of all required bonds, fees, and evidence of forms of approvals. The remaining sections are renumbered for consistency. The Federal regulations at 30 CFR 773.19(a) require that the permit be issued upon submittal of a performance bond. Maryland satisfies this requirement at revised COMAR 08.13.09.04J(3) (now 08.20.04.11C). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At new COMAR 08.13.09.04J(5) (now 08.20.04.11F), Maryland is deleting the requirement that it notify OSM that a permit has been issued within ten days of issuance. As discussed earlier, the Federal regulations at 30 CFR 773.19(b)(3) require notification. Maryland satisfies this requirement at revised COMAR 08.13.09.04J(4) (now 08.20.04.11D). The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04J(7) (now 08.20.04.11G), Maryland is deleting the requirement that it forward to OSM a copy of the mining permit and related documents and permits. The Federal regulations at 30 CFR 773.19 pertaining to permit issuance contain no comparable requirement. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations.

At COMAR 08.13.09.04L (now 08.20.04.13), Maryland is deleting the word "final" in the phrase: "Within 30 days after the applicant is notified of the final decision of the Bureau concerning the application for a permit in accordance with Sec. J or K of this regulation. . . ." Because the revised regulation is substantively identical to the Federal regulation at 30 CFR 775.11(a), the Director finds it no less effective than its Federal counterpart.

2. Air Resources Protection

At COMAR 08.13.09.27B (8), (13), (14), and (15) (now 08.20.23.01B (8), (13), (14), and (15)), Maryland is deleting certain required fugitive dust control measures and is designating the remaining measures as optional examples. The remaining provisions are renumbered for consistency. The measures being deleted are: substituting conveyor systems for haul trucks under certain conditions, restricting areas to be blasted at any one time, restricting activities causing fugitive dust, and extinguishing and periodically inspecting burning areas when the potential for spontaneous combustion is high. The Federal regulations at 30 CFR 780.15(b)(2) require a plan for fugitive dust control practices, as required under 30 CFR 816.95 which pertains to the stabilization of surface areas. No specific dust control measures are provided. The Director finds that the proposed deletions do not render the State program less effective than the Federal regulations at 30 CFR 780.15(b)(2).

Maryland is deleting its existing provision for air monitoring at COMAR 08.13.09.27D (now 08.20.23.01D). Maryland provides regulations for air pollution control plans at COMAR 08.20.02.13G. The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations at 30 CFR 780.15(b)(1).

*Additions to Maryland's Regulations*

Permit Application Review Procedures

At COMAR 08.13.09.04B(3)(c) (now 08.20.04.02C), Maryland is adding a requirement that the State publish notification of a complete application, including a deadline for submitting comments, objections, or a request for a hearing in the Maryland Register. The Federal regulations at 30 CFR 773.13(a) do not require that the regulatory authority advertise a notice of a complete application. The Director finds that the proposed revision is not less effective than the Federal regulations at 30 CFR 773.13(a).

At COMAR 08.13.09.04J(3) (now 08.20.04.11), Maryland is adding a requirement that if the specified compliance review does not require that State to change its decision to approve the application, the permit shall be issued within 15 days of the State's receipt of all required bonds and fees. The Federal regulations at 30 CFR 773.19(a) require that if the permit is approved, the regulatory authority issue the permit upon submittal of a performance bond. The Director finds that the proposed revision is no less effective than the Federal regulations at 30 CFR 773.19(a).

## IV. Summary and Disposition of Comments

*Public Comments*

The public comment period announced in the March 26, 1993, **Federal Register** (58 FR 16383) ended on April 26, 1993. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony. The public comment period announced in the May 21, 1993, **Federal Register** (58 FR 29560) ended on June 21, 1993. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

*Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of the Interior, Bureau of Mines; the Department of Labor, Mine Safety and Health Administration; and the Department of the Army, Corps of Engineers, responded to the first submission and concurred without comment. No comments were received on the second submission.

*EPA Concurrence*

Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(11)(ii) require that the Administrator of the Environmental Protection Agency (EPA) concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). In a letter dated April 20, 1993, (Administrative Record No. MD–562.10), EPA concurred without comment.

**V. Director's Decision**

Based on the above findings, the Director is approving the program amendment submitted by Maryland on February 5, 1993, and revised on April 26, 1993.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement the decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

*Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

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

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

*Regulatory Flexibility Act*

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

**List of Subjects in 30 CFR Part 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

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

**PART 920—MARYLAND**

1. The authority citation for part 920 continues to read as follows:

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

2. In section 920.15, a new paragraph (x) is added to read as follows:

**§ 920.15 Approval of amendments to State regulatory programs.**

* * * * *

(x) The following amendment submitted to OSM on February 5, 1993, and revised on April 26, 1993, is approved effective July 6, 1993. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following rules of the Code of Maryland Administrative Regulations:

| | |
|---|---|
| 08.13.09.04B(3)(c) (Now 08.20.04.02C) | Permit Applications: Initial Review. |
| 08.13.09.04G(4) (Now 08.20.04.07D) | Permit Applications: Bureau Review. |
| 08.13.09.04H(1) (Now 08.20.04.08A) | Permit Applications: Public Hearing. |
| 08.13.09.04H(2)(b) (Now 08.20.04.08B(2) | Permit Applications: Public Hearing. |
| 08.13.09.04I(1) (Now 08.20.04.10A) | Permit Applications: Bureau Decision. |

| | |
|---|---|
| 08.13.09.04J(1) (Now 08.20.04.11A) | Permit Applications: Permit Approval. |
| 08.13.09.04J(4) (Now 08.20.04.11D) | Permit Applications: Permit Approval. |
| 08.13.09.04J(5) (new) (Now 08.20.04.11F) | Permit Applications: Permit Approval. |
| 08.13.09.04L (Now 08.20.04.13) | Permit Applications: Permit Approval. |
| 08.13.09.27A,B (Now 08.20.23.01A,B) | Air Resources Protection. |

(2) Deletion of the following rules from the Code of Maryland Administrative Regulations:

| | |
|---|---|
| 08.13.09.04B(4) (Now 08.20.04.02D) | Permit Applications: Initial Review. |
| 08.13.09.04C(2)(e) (Now 08.20.04.03B(5)) | Permit Applications: Newspaper Advertisement. |
| 08.13.09.04G(5) (Now 08.20.04.07E) | Permit Applications: Bureau Review. |
| 08.13.09.04G(6) (Now 08.20.04.07F) | Permit Applications: Bureau Review. |
| 08.13.09.04(I) (Now 08.20.04.09) | Permit Applications: Land Reclamation Committee. |
| 08.13.09.04J(1)(a) (Now 08.20.04.11A(1)) | Permit Applications: Permit Approval. |
| 08.13.09.04J(2) (Now 08.20.04.11B) | Permit Applications: Permit Approval. |
| 08.13.09.04J(5) (Now 08.20.04.11E) | Permit Applications: Permit Approval. |
| 08.13.09.04J(7) (Now 08.20.04.11G) | Permit Applications: Permit Approval. |
| 08.13.09.27B(8),(13),(14),(15) (Now 08.20.23.01B(8),(13),(14),(15)) | Air Resources Protection. |
| 08.13.09.27D (Now 08.20.23.01D) | Air Resources Protection. |

(3) Addition of the following rules to the Code of Maryland Administrative Regulations:

| | |
|---|---|
| 08.13.09.04B(3)(c) (Now 08.20.04.02C) | Permit Applications: Initial Review. |
| 08.13.09.04J(3) (Now 08.20.04.11) | Permit Applications: Permit Approval. |

[FR Doc. 93–15851 Filed 7–2–93; 8:45 am]
BILLING CODE 4310–05–M

## 30 CFR Part 938

## Pennsylvania Regulatory Program; Permit Fee

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing the approval of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment increases Pennsylvania's surface coal mining and reclamation fee from $50 per acre to $100 per acre. This amendment is intended to assist in rendering the State's Surface Mining Conservation and Reclamation Fund more solvent.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Pennsylvania Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

### I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

### II. Submission of Amendment

By letter dated February 18, 1993 (Administrative Record No. PA–818.00), Pennsylvania submitted a State program amendment to address a shortage of revenues to the Surface Mining Conservation and Reclamation Fund.

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16389), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the

adequacy of the proposed amendment. The public comment period closed on April 26, 1993. The public hearing scheduled for April 12, 1993, was not held as no one requested an opportunity to testify.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania Program.

*Section 86.17 Permit and Reclamation Fees*

Pennsylvania proposes to revise section 86.17 concerning the reclamation fee charged for surface mining activities, to increase the fee from $50 per acre to $100 per acre. The money collected through the reclamation fee will be deposited in Pennsylvania's Surface Mining Conservation and Reclamation Fund (hereinafter referred to as the Fund) and shall be dedicated to the reclamation and revegetation of defaulted mining operations as a supplement to bond forfeiture funds.

The Fund is one component of an alternative bonding program which is used to supplement both the bonding cost incurred by the permittee and the bonds available for the reclamation of forfeited surface coal mining operations. The increase in the cost of the reclamation fee from $50 per acre to $100 per acre is being proposed by the State to offset a shortage of revenue to the Fund.

Under 30 CFR 800.11(e), the Director may approve an alternative bonding system provided the State has demonstrated that the alternative bonding system will have available sufficient funds to complete the reclamation plan for any areas which may be in default at any time. On May 31, 1991 (56 FR 24687), the Director conditionally approved a Pennsylvania amendment to revise the alternative bonding program pending a demonstration by Pennsylvania that the revenues generated through collection of the reclamation fee will meet the requirements of 30 CFR 800.11(e), as stated above.

In compliance with the finding, Pennsylvania has undertaken to have an independent actuarial appraisal of the solvency of its alternative bonding program. As of the date of this final rule, the conclusion of that study is not final. Therefore, the proposed amendment of the language of 86.17 (56 FR 24687) is still only conditionally approved.

In its amendment submittal, Pennsylvania acknowledges that "(E)ven though the proposed fee of $100 per acre may still be insufficient, a stop gap measure is needed to keep the situation from worsening." Therefore, because this amendment is not intended to satisfy the solvency requirements stipulated by the Director's conditional approval of section 86.17 (56 FR 24687), but is instead an intermediate step to keep the shortage in the Fund from further deteriorating, the Director is approving the proposed revision to section 86.17 to increase the reclamation fee from $50 per acre to $100 per acre.

**IV. Summary and Disposition of Comments**

*Public Comment*

The public comment period and opportunity to request a public hearing announced in the March 26, 1993, **Federal Register** ended on April 26, 1993. No public comments were received, and since no one requested an opportunity to testify at the scheduled public hearing, one was not held.

*Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(ii)(i), comments were solicited from various Federal and State agencies with an actual or potential interest in the Pennsylvania program. Responses received from the Department of Labor, Mine Safety and Health Administration, District 1 and the Department of Agriculture, Soil Conservation Service, were supportive of the amendment. The Department of Interior, Fish and Wildlife Service and Bureau of Mines; Department of Labor, Mine Safety and Health Administration, District 2; and the U.S. Army Corp of Engineers responded without comment or objection to the amendment. The Environmental Protection Agency and the Advisory Council on Historic Preservation did not respond to the request for comments.

**V. Director's Decision.**

Based on the findings discussed above, the Director is approving Pennsylvania's program amendment pertaining to the increase in the reclamation fee from $50 per acre to $100 per acre, as submitted on February 18, 1993.

*Effect of the Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

*EPA Concurrence*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

**VI. Procedural Determinations**

*Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent

with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

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

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

*Regulatory Flexibility Act*

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

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

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

## PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

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

2. Section 938.15, is amended by adding a new paragraph (z) to read as follows:

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

* * * * *

(z) The amendment to the Pennsylvania regulatory program pertaining to the General Requirements for Permits and Permit Applications, title 25, Pennsylvania Code Section 86.17 which increased the reclamation fee from $50 to $100 per acre is approved, effective July 6, 1993.

[FR Doc. 93–15848 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 164

**[CGD 91–203, 91–204, 91–222]**

**RIN 2115–AE00, AE03, AE12**

## Navigation Underway; Tankers; Partial Suspension of Effectiveness

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; partial suspension of effectiveness.

**SUMMARY:** The Coast Guard is partially suspending the effectiveness of the provisions of the rule governing the use of autopilot equipment in the navigable waters of the United States. The portion affected would have allowed expanded use of autopilots in integrated navigation systems. The rule is being suspended because the technology necessary to implement this provision is not fully developed or adequately tested.

**EFFECTIVE DATE:** Suspension of § 164.13(e) is effective July 9, 1993.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–204), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margie G. Hegy, Short Range Aids to Navigation Division (G–NSR–3), (202) 267–0415.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal person involved in drafting this document is Margie G. Hegy, Project Manager.

**Discussion**

The Coast Guard published a proposed rule on January 3, 1992, (57 FR 514), a supplemental notice of proposed rulemaking (SNPRM) on October 2, 1992, (57 FR 45667), and a final rule on May 10, 1993, (58 FR 27628) on the use of autopilots. New § 164.13(e) of Title 33 allows tankers with an integrated navigation system (INS) to use their autopilot in certain traffic separation schemes and shipping safety fairways where conventional autopilot use is prohibited. This provision was added at the SNPRM stage because of comments suggesting that a modern autopilot that is part of an INS would be far more capable and reliable than the older autopilots described in the International Maritime Organization standard referenced in the NPRM.

The effectiveness of this provision is suspended because of a comment received after publication of the final rule. The comment pointed out that at present, INS is a broad, general term that applies to a wide range of shipboard systems that utilize the input from two or more shipboard sensors to determine ship's position, course, and speed. Currently there is no performance standard for a shipboard INS in terms of accuracy, integrity, or reliability. Although the Coast Guard recognizes that the use of INS with an autopilot offers the potential to improve navigation safety, adequate testing and evaluation of this technology has not been conducted. The Coast Guard intends to conduct further rulemaking concerning necessary testing and methodology for certifying that performance standards have been met and will provide further opportunity for public input.

Dated: June 29, 1993.

**W.J. Ecker,**

*Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 93–15818 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

**[WH–FRL–4668–1]**

## Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; State's Compliance

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is amending a rule issued on December 22, 1992, to

withdraw a portion of that rule as it applies to the State of Washington. The aquatic life criteria for arsenic and selenium adopted by Washington and approved by EPA make the Federally promulgated criteria for these pollutants unnecessary.

**EFFECTIVE DATE:** This amendment is effective July 6, 1993.

**ADDRESSES:** The administrative record for the consideration of Washington's revised standards is available for public inspection from the Environmental Protection Agency, Region X Office, Water Division, 1200 Sixth Avenue, Seattle, WA, 98101, during normal business hours of 8 a.m. until 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** David K. Sabock, Chief, Water Quality Standards Branch (WH–585), Office of Water, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The telephone number is 202–260–1315.

**SUPPLEMENTARY INFORMATION:** A final rule to establish numeric water quality criteria for those States and Territories that failed to comply fully with section 303(c)(2)(B) of the Clean Water Act was published in the **Federal Register** on December 22, 1992 (57 FR 60848). Federal criteria were promulgated for 12 States and 2 Territories, and these criteria became the legally enforceable water quality standards in the named States and Territories for all purposes and programs under the Clean Water Act on February 5, 1993.

As indicated in the preamble to the final rule, EPA would amend the rule to withdraw criteria from the rule when a State adopted and EPA approved criteria that met the requirements of the Clean Water Act (see 57 FR 60860). On November 25, 1992, the State of Washington adopted revisions to the State's surface water quality standards, Chapter 173–201A of the Washington Administrative Code, regarding aquatic life criteria for arsenic and selenium. The State adopted criteria identical to those promulgated by EPA for both fresh and marine waters. These criteria were approved by EPA on March 25, 1993.

EPA's promulgated criteria for arsenic and selenium are now duplicative of EPA-approved State criteria and are no longer needed to meet the requirements of the Act. It is EPA's policy to withdraw promulgated water quality standards when the State adopts new or revised standards which meet the requirements of the Act (57 FR 60848). Accordingly, EPA is amending its rule promulgated December 22, 1992, to withdraw the criteria for arsenic and selenium for the protection of aquatic life for Washington. Other criteria promulgated by EPA for Washington remain in force.

Washington complied with the public participation requirements in its adoption of State standards. Additionally, because Washington adopted, and EPA approved, water quality criteria for arsenic and selenium for the protection of fresh and marine aquatic life identical to those being withdrawn in today's rule, EPA has determined that additional public participation in this action is unnecessary and constitutes good cause for issuing this final rule without notice and comment. For the same reasons, the Agency has determined that good cause exists to waive the requirement for a 30-day period before the amendment becomes effective and therefore the amendments will be immediately effective.

This action imposes no new regulatory requirements but merely withdraws a Federal regulation. Therefore, this rule imposes no costs and does not require a regulatory impact analysis under Executive Order 12291. The Agency has determined that this action will have no significant impact on a substantial number of small entities. The rule also does not impose any requirements subject to the Paperwork Reduction Act.

### List of Subjects in 40 CFR Part 131

Water pollution control, Water quality standards, Toxic pollutants.

Dated: June 8, 1993.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble title 40, Chapter I, part 131 of the Code of Federal Regulations is amended as follows:

## PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 et seq.

### §131.36 [Amended]

2. Section 131.36(d)(14)(ii) is amended in "Fish and Shellfish; Fish" use classification, under the listing of applicable criteria, by removing the entries "Column B1 and B(2)—#2, 10" and "Column C1—#2, 10" in their entirety and by removing "#2" and "#10" from the entry for Column C2.

[FR Doc. 93–15862 Filed 7–2–93; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 34, 35 and 43

**[Common Carrier Docket No. 92–145, FCC No. 93–292]**

### Uniform Systems of Accounts for Record Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopted a Report and Order which eliminates the Commission's rules on a uniform system of accounts for radiotelegraph carriers and a uniform system of accounts for wire-telegraph and ocean-cable carriers and also eliminates the related Annual Reports Forms R and O. Finally, the Commission requires record carriers to file a letter each year on operating revenues and communications plant. We make these changes because we do not see a need for these record carriers to continue accounting under uniform systems of accounts or to file extensive data with us. These changes provide effective and adaptive regulation for record carriers while eliminating regulations that are unnecessary or inimical to the public interest.

**EFFECTIVE DATE:** October 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** Debra Weber, Common Carrier Bureau, Accounting and Audits Division, (202)–634–1861.

**SUPPLEMENTARY INFORMATION:** The Commission's Report and Order eliminates the accounting systems in parts 34 and 35 of the Commission's rules and also eliminates the associated annual reports' filing requirements in part 43 of our rules. Finally, we require record carriers with annual revenue of over $75 million to file an annual letter which includes selected information from their income statements and balance sheets.

### Paperwork Reduction

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, room 234, Paperwork

Reduction Project (3060–0515), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0515), Washington, DC 20503.

**List of Subjects**

*47 CFR Part 1*

Reporting and recordkeeping requirements.

*47 CFR Part 34*

Communications common carriers, Radiotelegraph, Uniform Systems of Accounts.

*47 CFR Part 35*

Communications common carriers, Uniform Systems of Accounts, Wire-telegraph and ocean cable.

*47 CFR Part 43*

Communications common carriers, Reporting and recordkeeping requirements, Telegraph.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Rule Changes**

47 CFR parts 1, 34, 35, and 43 are amended as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

1. Section 1.785 (a) is revised to read as follows:

**§ 1.785 Annual financial reports.**

(a) An annual financial report shall be filed by telephone carriers and affiliates as required by part 43 of this chapter on Form M.

* * * * *

**§§ 1.793 and 1.794 [Removed]**

2. Sections 1.793 and 1.794 are removed.

## PART 34—[REMOVED]

3. Part 34 is removed in its entirety.

## PART 35—[REMOVED]

4. Part 35 is removed in its entirety.

## PART 43—REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

5. The authority citation for part 43 continues to read as follows:

**Authority:** Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

6. Paragraphs (a) and (d) of § 43.21 are revised to read as follows:

**§ 43.21 Annual reports of carriers and certain affiliates.**

(a) Communication common carriers having annual operating revenues in excess of $100 million, and certain companies (as indicated in paragraph (c) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports or an annual letter as provided in this section. Except as provided in paragraphs (c), (e) and (f) of this section, each annual report required by this section shall be filed not later than March 31 of each year, covering the preceding calendar year. It shall be filed on the appropriate report form prescribed by the Commission (see § 1.785 of this chapter) and shall contain full and specific answers to all questions propounded and information requested in the currently effective report forms. The number of copies to be filed shall be specified in the applicable report form. At least one copy of this report shall be signed on the signature page by the responsible accounting officer. A copy of each annual report shall be as retained in the principal office of the respondent and shall be filed in such manner to be readily available for reference and inspection.

* * * * *

(d) Each miscellaneous common carrier (as defined by § 21.1 of this chapter) with operating revenues over $100 million for a calendar year shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. Each record carrier with operating revenues over $75 million for a calendar year shall file a letter showing selected income statement and balance sheet items for that year with the Common Carrier Bureau Chief. These letters must be filed by March 31 of the following year.

* * * * *

[FR Doc. 93–15787 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Parts 61, 64 and 69

**[CC Docket No. 91–115; FCC 93–254]**

## Tariffing Requirements for Billing Name and Address

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On May 13, 1993, the Commission adopted a Second Report and Order establishing rules requiring local exchange carriers to provide billing name and address information on a common carrier basis to telecommunications service providers for billing purposes. This will enable telecommunications service providers without billing and collection agreements with local exchange carriers to perform their own billing and collection, thus improving competition in the market for billing and collection services. The Commission also adopted rules limiting billing name and address disclosure to telecommunications service providers and prohibit use of billing name and address information for purposes other than billing for telecommunications services. These rules are designed to protect the privacy of end users.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 632–6917.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order adopted May 13, 1993, and released June 9, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, suite 140, 2100 M Street, NW., Washington, DC 20037.

Regulatory Flexibility Analysis: We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange carriers do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service

area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant effect on a substantial number of "small entities."

**Summary of Report and Order**

Joint use cards are calling cards issued by local exchange carriers (LECs) which can be used to charge both local and long distance calls. Interexchange carriers need billing name and address (BNA) information to bill for calls made with joint use cards, as well as third party or collect calls. The Commission's Second Report and Order requires local exchange carriers to provide their customers' billing name and address information to interexchange carriers and other telecommunications service providers on a common carrier basis for this purpose. The Second Report and Order amends the access charge rules to provide a separate rate element for billing name and address information, but otherwise prescribes no rate structure for BNA, so that local exchange carriers will have the flexibility they need to meet their customers' needs.

Requiring provision of BNA information on a common carrier basis makes the market for billing and collection services more competitive by ensuring that interexchange carriers and other telecommunications service providers can perform their own billing and collection. The Second Report and Order strikes an optimal balance between interexchange carriers' interests in being able to perform their own billing and collection, and the privacy interests of end users, without being unduly burdensome to the local exchange carriers.

Local exchange carriers collect, maintain, and update BNA information as part of their exchange access service. Therefore, BNA is incidental to a communications service within the meaning of sections 3(a) and 3(h) of the communications act. In addition, only Local exchange carriers have access to accurate, up-to-date BNA information. Therefore, the draft order would treat BNA as a common carrier service.

Because widespread disclosure of BNA information could conflict with customers' reasonable expectations of privacy, the item limits BNA disclosure, thus safeguarding these expectations. First, local exchange carriers may not release BNA information for any use other than billing and collection, and to no one other than interexchange carriers and other telecommunications service providers, and their authorized billing and collection agents. Secondly, local exchange carriers must notify their subscribers that when subscribers use a local exchange carrier joint use card or accept a collect or third party call, their BNA may be disclosed to the serving interexchange carriers and other telecommunications service providers to facilitate billing. We expect this notification to serve two purposes. First, it will minimize intrusion on privacy because subscribers will be on notice that their BNA will be released to telecommunications providers whenever they use their joint use cards or their local exchange account to pay for telecommunications services. Second, this procedure should reduce some local exchange carriers' concerns that end users may be confused or surprised when they receive a bill from a non-local exchange carrier company.

As a further precaution, local exchange carriers are prohibited from releasing the BNA information associated with unlisted and unpublished telephone numbers without the customer's consent. In addition to the notification requirement established above, we also require LECs to obtain a one-time written authorization for BNA disclosure from existing and future LEC cardholders having unpublished or unlisted numbers. With respect to third party and collect calls, customers are given an opportunity to accept or reject charges to their line accounts prior to the completion of those calls, and no BNA is released if the subscriber refuses the call. We conclude that this opportunity to refuse a call is sufficient to protect from unwanted disclosure the BNA of end users with unpublished or unlisted numbers. Accordingly, we need not adopt any additional safeguards to protect unlisted or unpublished BNA with respect to collect or third party calls.

**Conclusion**

In this Report and Order, we require LECs to provide BNA for their LEC joint use calling cards pursuant to title II in order to ensure that BNA is provided in a non-discriminatory manner at just and reasonable rates. Because of the variety of ways in which it is possible to offer BNA, we do not believe it is necessary to impose a uniform method of providing the service or a uniform rate structure. In order to balance the privacy concerns of end users with the telecommunications providers' need to obtain payment for their services, we require that LECs disclose BNA to IXCs and enhanced and information service providers and their authorized agents for the limited purpose of billing end users for telecommunication services charged to their LEC calling cards. In addition, we mandate a one-time notification requirement to all end users that BNA for their LEC card will be disclosed for billing purposes and we require the LECs to secure authorization for BNA disclosure from those end users with unlisted or unpublished numbers.

**Ordering Clauses**

Accordingly, *it is ordered*, That the policies, rules and requirements set forth herein *are adopted*.

*It is further ordered*, That pursuant to authority contained in sections 1, 4 and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 201–205, parts 61, 64, and 69 of the Commission's Rules, 47 CFR part 61, 64, 69, are amended as set forth below.

*It is further ordered*, That all local exchange carriers that have issued local exchange carrier joint use calling cards as defined by this Order SHALL FILE, within 90 days of the release of this Order, tariff revisions to become effective on 45 days' notice that are consistent with this Order. For these purposes we waive § 61.58 and 61.59 of the Commission's Rules, 47 CFR 61.58, 61.59, and assign Special Permission No. 93–398.

*It is further ordered*, That all local exchange carriers that have issued local exchange carrier joint use calling cards as defined by this Order SHALL PROVIDE notification as required by this Order to their subscribers, within 60 days of the release of this Order. Furthermore, all local exchange carriers that have issued local exchange carrier joint use calling cards as defined by this Order SHALL OBTAIN consent from their joint use calling card subscribers with unlisted or unpublished telephone numbers for disclosure of their billing name and address information for billing purposes, within 60 days of the release of this Order.

*It is further ordered*, That the provisions in this Second Report and Order will be effective August 5, 1993.

**List of Subjects**

*47 CFR Part 61*

Communications common carriers, Tariffs.

*47 CFR Part 64*

Communications common carriers, Miscellaneous rules relating to common carriers.

*47 CFR Part 69*

Communications common carriers, Access charges.

**Rules; Amendments to the Code of Federal Regulations**

Title 47 of the CFR, parts 61, 64, and 69 are amended as follows:

## PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154.

2. Section 61.42 is amended by removing the period at the end of paragraph (e)(1)(vi) and adding in its place "; and", and adding paragraph 61.42(e)(1)(vii) to read as follows:

**§ 61.42 Price cap baskets and service categories.**

* * * * *

(e) * * *

(1) * * *

(vii) Billing name and address, as described in § 69.128 of this chapter.

* * * * *

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

4. Section 64.1201 is added to read as follows:

**§ 64.1201 Restrictions on billing name and address disclosure.**

(a) As used in this section:

(1) The term *billing name and address* means the name and address provided to a local exchange company by each of its local exchange customers to which the local exchange company directs bills for its services.

(2) The term *telecommunications service provider* means interexchange carriers, operator service providers, enhanced service providers, and any other provider of telecommunications services.

(3) The term *authorized billing agent* means a third party hired by a telecommunications service provider to perform billing and collection services for the telecommunications service provider.

(4) The term *bulk basis* means billing name and address information for all the local exchange service subscribers of a local exchange carrier.

(5) The term *LEC joint use card* means a calling card bearing an account number assigned by a local exchange carrier, used for the services of the local exchange carrier and a designated interexchange carrier, and validated by access to data maintained by the local exchange carrier.

(b) No local exchange carrier providing billing name and address shall disclose billing name and address information to any party other than a telecommunications service provider or an authorized billing and collection agent of a telecommunications service provider.

(c) No telecommunications service provider or authorized billing and collection agent of a telecommunications service provider shall use billing name and address information for any purpose other than billing customers for using telecommunications services of that service provider and collecting amount due.

(d)(1) No local exchange carrier shall disclose billing name and address information on a bulk basis.

(2) Nothing in paragraph (d)(1) of this section shall preclude local exchange carriers from providing to an interexchange carrier the billing name and address information for all customers presubscribed to that interexchange carrier.

(e)(1) All local exchange carriers providing billing name and address information shall notify their subscribers that:

(i) The subscriber's billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, FCC 93–254, adopted May 13, 1993, whenever the subscriber uses a LEC joint use card to pay for services obtained from the telecommunications service provider, and

(ii) The subscriber's billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, FCC 93–254, adopted May 13, 1993, whenever the subscriber accepts a third party or collect call to a telephone station provided by the LEC to the subscriber.

(2) All local exchange carriers shall obtain from subscribers with local exchange carrier joint use cards who also have unlisted or unpublished telephone numbers written consent for disclosure of the billing name and address information associated with the local exchange carrier joint use card account before disclosing such information pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, FCC 93–254, adopted May 13, 1993.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply to disclosure of billing name and address information in the circumstances described in paragraph (d)(2) of this section.

## PART 69—ACCESS CHARGES

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

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154.

6. Section 69.128 is added to read as follows:

**§ 69.128 Billing name and address.**

Appropriate subelements shall be established for the use of equipment or facilities that are associated with offerings of billing name and address.

7. Paragraph (b) of § 69.307 is redesignated as paragraph (c), and new paragraph (b) is added to read as follows:

**§ 69.307 General support facilities.**

* * * * *

(b) General purpose computer investment used in the provision of the billing name and address element at § 69.128 shall be assigned to that element.

* * * * *

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–15788 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Parts 61, 65 and 69**

**[CC Docket No. 92–135; FCC 93–253]**

## Reform for Local Exchange Carriers Subject to Rate of Return Regulation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On May 13, 1993 the Commission adopted a Report and Order establishing rules affecting rate of return regulated local exchange carriers. The proceeding established optional regulatory reforms that compliment the price cap system applicable to the largest local exchange carriers, by providing incentives for smaller companies to become more efficient and by encouraging technological development. Because these smaller companies provide service primarily to rural areas, these options will help bring ratepayer benefits gained from incentive regulations to rural Americans as well as urban populations served by the largest carriers. These options also reduce administrative burdens, and

increase flexibility, while continuing to assure high service quality and universal service at reasonable rates. The Commission therefore established a continuum of options to be made available to the over 1300 carriers not required to be regulated under price caps.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew Mulitz, Attorney/Advisor, Tariff Division, Common Carrier Bureau, (202) 632–6917.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order adopted May 13, 1993, and released June 11, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service (202) 857–3800 1919 M Street, NW., suite 246, Washington, DC 20554.

**Paperwork Reduction Analysis**

Public reporting for this collection of information is estimated to average 833 hours per service quality response and 10 hours per infrastructure response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project (3060–0510), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0510), Washington, DC 20503.

**Regulatory Flexibility Analysis**

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. Additionally, the regulatory regimes established by these rules are both optional and less burdensome than existing requirements. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of "small entities." Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers as is evidenced by this proceeding.

**Summary of Report and Order**

The more than 1300 local exchange carriers that do not participate in price caps represent approximately 6 percent of the LEC industry. These companies range in size from less than 100 to more than 1 million access lines. These carriers have resisted the price caps option for a number of reasons, including: unwillingness to assume the risks, inability to spread the risks; and, discomfort with the administrative complexity of price caps.

Therefore, the Report and Order establishes three options that, together with price caps, would establish a continuum of regulatory options. The continuum extends from traditional, basic rate of return regulation to full price caps. As a carrier proceeds along the continuum, the risks and potential rewards increase.

The option offering the least risk—traditional, basic rate of return—would be applicable to the National Exchange Carrier Association (NECA) and any company that does not elect another option. This form of regulation would differ from the present methods in two major aspects. First, as proposed, a filing entity other than NECA could, at its option, file tariffs every two years instead of annually. Second, the Common Carrier Bureau could introduce, as a further option, greater reliance on historical costs and simple extrapolations made from historical costs.

The next level along the continuum would be available to small telephone companies serving 50,000 access lines or less, with gross annual revenues of $40 million and less. Such companies that do not participate in the NECA pools would be able to file tariffs for all interstate rates based on historical costs for two-year periods. Under existing rules, these carriers may file such tariffs for traffic sensitive rates only. With the exception of subscriber line charges, no cost support would have to be filed with the tariffs; however, the information would be available upon request of the Commission or interested parties. We believe ratepayers would reap the full benefits of reduced costs by lower rate reflected in biennial tariff filings.

Third, the Commission adopted an optional incentive plan open to all LECs outside of the NECA pools. Under the optional incentive plan, carriers would file tariffs every two years. Cost support showings would be based on historical, rather than projected, costs. The earnings bond would be 150 basis points above and 75 basis points below the rate of return authorized by the Commission. Pricing flexibility would be pursuant to rules similar to those used in price caps. Ratepayers would benefit by rate reductions reflecting the cost reductions of the historical period.

The final step in the continuum is the previously-adopted price cap regulation plan.

**Ordering Clauses**

Accordingly, *It is ordered that,* Pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, part 61, part 65, and part 69, and §§ 61.38, 61.39, 61.50, 61.58, 65.700, and 69.3, are amended as set forth below.

It is further ordered, That this Report and Order will be effective thirty days after publication in the **Federal Register.**

**List of Subjects**

*47 CFR Part 61*

Communications common carriers, Tariffs.

*47 CFR Part 65*

Communications common carriers, Interstate rate of return prescription and methodologies.

*47 CFR Part 69*

Access charges, Communications common carriers.

**Rules**

**Amendments to the Code of Federal Regulations**

Title 47 of the CFR, parts 61, 65, and 69 are amended as follows:

**PART 61—TARIFFS**

1. The authority citation for part 61 continues to read as follows:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by revising paragraph (e) to read as follows:

**§ 61.3 Definitions.**

* * * * *

(e) *Base period.* For carriers subject to §§ 61.41–61.49, the 12-month period ending six months prior to the effective date of annual price cap tariffs, or for carriers regulated under § 61.50, the 24-month period ending six months prior to the effective date of biennial optional incentive plan tariffs.

* * * * *

3. Section 61.38 is amended by revising paragraph (a) to read as follows:

**§ 61.38 Supporting information to be submitted with letters of transmittal.**

(a) *Scope.* This section applies to dominant carriers whose gross annual revenue exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (a), (b), (d), (e), and (g), promotional offerings that relate to services subject to price cap regulation, tariff filings proposing rates for services identified in § 61.50, or to tariff filings, other than promotional filings, filed on 14 days' notice pursuant to § 61.58(c)(6).

* * * * *

4. Section 61.39 is amended by revising paragraphs (a) and (b), and adding a new paragraphs (d) and (e) to read as follows:

**§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.**

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42(d), (e) and (g), which filings are submitted by carriers subject to price cap regulation, or to tariff filings proposing rates for services identified in § 61.50, which filings are submitted by carriers subject to optional incentive regulation.

(b) *Explanation and data supporting tariff changes.* The material to be submitted to either a tariff change or a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by § 61.33. The basis for ratemaking must comply with the following requirements. Except as provided in paragraph (b)(5) of this section, it is not necessary to submit this supporting data at the time of filing. However, the local exchange carrier should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the local exchange carrier that is a cost schedule carrier must propose Tariff Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the local exchange company that is an average schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Traffic Sensitive settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas approved by the Commission.

(3) For a tariff change, the local exchange carrier that is a cost schedule carrier must propose Common Line rates based on the following:

(i) For the first period the Carrier Common Line revenue requirement shall be determined by a cost of service study for the most recent 12 month period. The Carrier Common Line revenue requirement shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(ii) For subsequent filings, the Carrier Common Line revenue requirement shall be determined by a cost of service study for the total period since the carrier's last biennial access filing. The Carrier Common Line revenue requirement determined in this manner shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(4) For a tariff change, the local exchange carrier which is an average schedule carrier must propose common line rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Common Line settlement from the National Exchange Carrier Association that is conclusively binding upon the carrier and the Association. This carrier common line settlement amount shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(ii) For subsequent filings, an amount calculated to reflect the average schedule pools settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule Common Line formulas approved by the Commission. This amount shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(5) For End User Common Line charges included in a tariff pursuant to this Section, the local exchange carrier must provide supporting information for the two-year historical period with its letter of transmittal in accordance with § 61.38.

* * * * *

(d) Rates for a new service that is the same as that offered by a price cap

regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap regulated local exchange carrier; and

(2) Data to establish compliance with this subsection that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier. Compliance may be shown through submission of applicable tariff pages of the adjacent carrier; a showing that the serving areas are adjacent; any necessary explanations and work sheets.

(e) Average schedule companies filing pursuant to this Section shall retain their status as average schedule companies.

5. Section 61.45 is amended by revising paragraph (d)(2) to read as follows:

**§ 61.45 Adjustments to the PCI for local exchange carriers.**

* * * * *

(d) * * *

(2) Local exchange carriers specified in § 61.41 (a)(2) or (a)(3) shall also make such temporary exogenous cost changes as may be necessary to reduce PCIs to give full effect to any sharing of base period earnings required by the sharing mechanism set forth in the Commission's Second Report and Order in Common carrier Docket No. 87–313, FCC 90–314, adopted September 19, 1990. Such exogenous cost changes shall include interest, computed at the prescribed rate of return, from the day after the end of the period giving rise to the adjustment, to the midpoint of the period when the adjustment is in effect.

* * * * *

6. Section 61.50 is revised to read as follows:

**§ 61.50 Scope: Optional incentive regulation for rate of return local exchange carriers.**

(a) This section shall apply on an elective basis, to local exchange carriers for either traffic sensitive rates only or for both traffic sensitive and common line rates. Carriers electing the plan for traffic sensitive rates only must participate in the Association common line pool. Affiliation with average schedule companies shall not bar a carrier from electing optional incentive regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files an optional incentive regulation tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file incentive plan tariffs in all their study areas.

(c) The following rules apply to telephone companies subject to this section, that become involved in mergers, acquisitions, or similar transactions, except that mergers with, acquisitions by, or other similar transactions with companies subject to price cap regulation, as that term is defined in § 61.3(w), shall be governed by § 61.41(c).

(1) Any telephone company subject to this section that is a party to a merger, acquisition, or similar transaction, shall continue to be subject to incentive regulation notwithstanding such transaction.

(2) Where a telephone company subject to this section acquires, is acquired by, merged with, or otherwise becomes affiliated with a telephone company that is not subject to this section, the latter telephone company shall become subject to optional incentive plan regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file optional incentive plan tariffs to be effective no later than that date in accordance with the applicable provisions of this Part 61.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, when a telephone company subject to optional incentive plan regulation acquires, is acquired by, mergers with, or otherwise becomes affiliated with a telephone company that qualifies as an "average schedule" company, the latter company may retain its "average schedule" status or become subject to optional incentive plan regulations in accordance with § 69.3(i)(3) of this chapter and the requirements referenced in that section.

(d) Local exchange carriers that are subject to this section shall not withdraw from optional incentive regulation until the end of two, two-year tariff periods. If a local exchange carrier withdraws from optional incentive plan regulation, it must file company-specific tariffs under the provisions of § 61.38 for four years before it may again elect to enter incentive plan regulation; such carrier may not participate in the applicable Association tariff during that four years. After the four year period, the carrier may either return to the incentive plan, or remain under § 61.38.

(e) Each local exchange carrier subject to this section shall establish the baskets of services, including service categories, as identified in § 61.42 (d) and (e).

(f) Each local exchange carrier subject to optional incentive regulation shall exclude from its baskets such services or portions of such services as the Commission has designated or may hereafter designate by order.

(g) New services, other than those within the scope of paragraph (f) of this section, must be included in the affected basket at the first two-year tariff filing following completion of the two-year tariff period in which they are introduced. To the extent that such new services are permitted or required to be included in new or existing service categories within the assigned basket, they shall be so included at the first two-year tariff filing following completion of the two-year tariff period in which they are introduced.

(h)(1) Except as provided in paragraph (c)(4) of this section, in connection with any optional incentive plan tariff filings proposing rate changes, the carrier must calculate an index for each affected basket as determined by the Common Carrier Bureau.

(2) In connection with any tariff filed under this section proposing changes to rates for services in the basket designated in paragraph (e) of this section, the maximum allowable increase or decrease in a basket shall be limited to ten percent over the two-year tariff period.

(i) Rates for a new service that is the same as that offered by a price cap regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rate established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap regulated local exchange carrier; and

(2) Data to establish compliance with this subsection that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier.

(j) The maximum allowable rate of return on earnings based on rates filed by a local exchange carrier subject to this section, shall be determined by adding a fixed increment of one and one-half percent to the carrier's prescribed rate of return. Rates of local exchange carriers subject to this section that result in earnings less than three-

quarters percent below the carrier's prescribed rate of return may be retargeted to three-quarters percent below the carrier's prescribed rate of return, in a mid-course tariff filing.

(k) Local exchange carriers filing common line rates under this section must propose Carrier Common Line rates based on the following:

(1) For the first period the Carrier Common Line revenue requirement shall be determined by a cost of service study for the most recent 12 month period. The Carrier Common Line revenue requirement shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(2) For subsequent filings, the Carrier Common Line revenue requirement shall be determined by a cost of service study for the total period since the carrier's last biennial access filing. The Carrier Common Line revenue requirement determined in this manner shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

7. Section 61.58 is amended by adding new paragraph (e) to read as follows:

**§ 61.58 Notice requirements.**

* * * * *

(e) *Carriers subject to optional incentive regulation.* Paragraph (e) of this section applies only to carriers subject to § 61.50. Such carriers must file tariffs according to the following notice periods:

(1) For initial and renewal tariff filings whose effective date coincides with the start of any two-year tariff period as defined in § 69.3(f) of this chapter, filings must be made on not less than 90 days' notice.

(2) For rate revisions made pursuant to § 61.50 (g) and (i), and § 61.39(d), tariff filings must be made on not less than 14 days' notice.

## PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1006, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 65.700 is amended by adding a new paragraph (d) to read as follows:

**§ 65.700 Determining the maximum allowable rate of return.**

* * * * *

(d) The maximum allowable rate of return for rates filed by local exchange carrier subject to § 61.50 of this chapter, shall be determined by adding a fixed increment of one and one-half percent to the carriers prescribed rate of return.

## PART 69—ACCESS CHARGES

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

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1006, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.3 is amended by revising the first sentence of paragraph (a), revising the first sentence of paragraph (e), paragraph (i) introductory text, paragraph (i)(1), paragraph (i)(3) and adding a new paragraph (j) to read as follows:

**§ 69.3 Filing of access service tariffs.**

(a) Except as provided in paragraphs (g) and (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. * * *

* * * * *

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff, except that a group rate for non-affiliated telephone companies may not be filed under § 61.50 of this chapter; e.g., the Association. * * *

* * * * *

(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraph (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to paragraph (h) of this section or optional incentive plan tariffs pursuant to § 61.50 of this chapter.

(1) In addition to the withdrawal provisions of paragraphs (e) (6) and (9) of this section, a telephone company or group of affiliated telephone companies that participates in one or more Association tariffs during the current tariff year and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 of the following tariff year, shall give the Association at least 6 months' notice that it is withdrawing from Association tariffs, subject to the terms of this section, to participate in price cap regulation or optional incentive regulation.

* * * * *

(3) Notwithstanding the provisions of paragraphs (e) (3), (6), and (9) of this section, in the event a telephone company withdraws from all Association tariffs for the purpose of filing price cap tariffs or optional incentive plan tariffs, such company shall exclude from such withdrawal all "average schedule" affiliates and all affiliates so excluded shall be specified in the withdrawal. However, such company may include one or more "average schedule" affiliates in price cap regulation or optional incentive plan regulation provided that each price cap or optional incentive plan affiliate relinquishes "average schedule" status and withdraws from all Association tariffs and any tariff filed pursuant to § 61.39(b)(2) of this chapter. See generally §§ 69.605(c), 61.39(b) of this chapter; MTS and WATS Market Structure: Average Schedule Companies, Report and Order, 103 FCC 2d 1026–1027 (1986).

* * * * *

(j) A telephone company or group of affiliated telephone companies that participates in an association tariff and elects to file its own tariff pursuant to § 61.50 of this chapter by January 1, 1994 shall notify the association not later than September 1, 1993 that it will no longer participate in the association tariff. This January 1, 1994 filing shall be for an 18-month tariff period. A telephone company or group of affiliated telephone companies that participates in an association tariff and elects to file its own tariff pursuant to § 61.50 of this chapter, by July 1, 1994 or thereafter pursuant to paragraph (a) of this section, shall notify the association not later than December 31 of the preceding year that it will no longer participate in that association tariff.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 93–14919 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF ENERGY

### 48 CFR Parts 922, 937, 952, and 970

### Acquisition Regulation; Arbitration in Collective Bargaining Agreements for Protective Services Contracts and Management and Operating Contracts

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule.

**SUMMARY:** The Department is amending the Department of Energy Acquisition Regulation (DEAR) to extend special procedures to certain contracts for protective services. These special procedures have been included in management and operating (M&O) contracts since the early 1950s. This rule extends such coverage to other than M&O contracts involving protective services. Coverage is also extended to subcontracts involving protective services under M&O contracts. The special procedures are designed to ensure continuity of operations at facilities where such continuity is vital to the national security or public safety. The procedure set forth in this rule requires management and labor, under protective services contracts, to exert their best efforts to find means other than lockouts or strikes to resolve any disputes and to include such agreement in collective bargaining agreements into which they may enter.

**EFFECTIVE DATE:** This rule will be effective August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Langston, Office of Procurement, Assistance and Program Management (PR–121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8247.

Linda Johnson, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1900.

**SUPPLEMENTARY INFORMATION:** .

I. Background
II. Detailed Changes
III. Procedural Requirements
A. Regulatory Review
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
IV. Public Comments

## I. Background

Under section 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984, (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

This action follows publication of a notice of proposed rulemaking in the **Federal Register** on August 12, 1991, 56 FR 38096. Five comments were received and are discussed at a later section.

## II. Detailed Changes

1. The authority citation for part 922 is repeated.

2. A new subsection 922.103–5, entitled "Contract clauses" is added to implement subsection 22.103–5 of the Federal Acquisition Regulation. The new subsection designates contracts for protective services as contracts requiring use of the clause at subsection 52.222–1, Notice to the Government of Labor Disputes, of the Federal Acquisition Regulation.

3. The authority citation for part 937 is repeated.

4. A new subpart entitled "Protective services contracting" is added at 937.70. The amendment requires labor and management to exert their best efforts to resolve disputes by means other than lockouts, strikes, or other interruptions of normal operations while performing DOE protective services contracts.

5. The authority citation for part 952 is repeated.

6. A new contract clause entitled "Collective bargaining agreements—protective services" is added at 952.237–70. It contains contract language to implement the policy set forth at item 4 above.

7. The authority citation for part 970 is repeated.

8. Section 970.2201 is revised at (b)(5)(ii) to specify use of a contract clause to reflect existing policy under management and operating contracts.

9. Finally, a new 970.5204–63 entitled "Collective bargaining agreements—management and operating contracts" is added. It contains contract language to implement the policy set forth at item 4 above.

## III. Procedural Requirements

### *A. Regulatory Review*

The Office of Management and Budget has reviewed this notice in accordance with their memorandum of guidance dated January 22, 1993, entitled "Regulatory Review". Separately, the Department has determined that there is no need for a regulatory impact analysis as the rule is not a major rule as that term is defined in section 1(b) Executive Order 12291.

### *B. Review Under the Regulatory Flexibility Act*

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

### *C. Review Under the Paperwork Reduction Act*

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

### *D. Review Under Executive Order 12612, Entitled "Federalism"*

This Executive Order requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's rule will revise certain policy and procedural requirements. DOE has determined that none of the revisions will have a direct effect on the institutional interests or traditional functions of the States.

### *E. National Environmental Policy Act*

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), or the DOE Guidelines for NEPA implementation (10 CFR part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

## IV. Public Comments

In response to the August 12, 1991, notice of proposed rulemaking, 56 FR 38096, five comments were received. One was from a DOE Field Office, two were from DOE management and operating contractors, and two were from a labor organization, separate letters being received from the Headquarters and one of its locals. Our action in response to the comments is discussed below.

*Comment 1*

The first comment pointed out a difference in the time period mentioned in 970.2201(b)(5)(ii); i.e., "for the term of the [collective bargaining] agreement," and 970.5204–63; i.e., "the period of performance of the contract." The comment noted that the collective bargaining agreement and the contract could be expected to have different time periods. The Department did not intend to affect the time periods of collective bargaining agreements. More specific language is being added to both paragraphs and to the clause at 952.237–70 which has the same problem. The changes are as follows:

(1) At 952.237–70, the first sentence, the words "during the contract period of performance" are being deleted;

(2) At the second sentence of the same paragraph, the words "entered into during the contract period of performance" are being added after the word "agreements";

(3) At the third sentence of the same paragraph, the words "for the period of performance of the contract" are being deleted from the end of the sentence;

(4) At the second sentence of 970.2201(b)(5)(ii), "entered into during the period of performance of the contract" is being added after the first use of the word "agreement" and the words "collective bargaining" are being inserted before the second use of the word "agreement";

(5) At the first sentence of 970.5204–63, the words "during the contract period of performance" are being deleted; and,

(6) At the third sentence of 970.5204–63, the words "for the period of performance of the contract" are being deleted.

*Comment 2*

Another reviewer suggested that the phrase "requiring continuity of services for the public safety and national security reasons" be added at 937.7040 to make it consistent with the text of 937.7010. This has been done. The reader observed that the coverage of 970.2201 is broader than that of 937.70, in that 970.2201 applies to all collective bargaining agreements under M&O contracts which require continuity of operations, while 970.37 only involves contracts for protective services where continuity is necessary. The reviewer suggests that 970.2201 be revised to be consistent with 937.70. The Department disagrees. The difference is intentional. In the case of M&O contracts, the policy is broadly interpreted and dates to the earliest days of the Atomic Energy Commission. M&O contracts, by their nature, must have continuity of operation. Requirements for protective services were originally provided as a part of the M&O contracts and were, thus, covered by this policy. In recent years, there has been an increasing tendency for these services to be subcontracted by the M&O contractors or to be directly procured by the Federal Government. The Department wishes to preserve this policy for this narrow class of non-M&O contracts; i.e., protective service contracts.

This review has led the Department to make additional changes for clarity. The word "services" has been changed to "operations" at 937.7010. The word "employees" has been changed to "contractors" where it first appeared in the last sentence of 937.7030.

*Comment 3*

Another reviewer, a management and operating contractor, expressed the view that the revisions would have no effect on its contract. The Department shares this view.

*Comments 4 and 5*

The final comments, from the Headquarters of a labor organization and one of its locals, objected to what they viewed as an attempt to eliminate their legal right to strike. It is not the Department's intent to do so as such action would be contrary to statute. The Department's intent is to assure that management and labor have a recourse other than lockout or strike to voluntarily pursue means of remedy, generally expected to be arbitration, which can hopefully ensure continuity of operation. The Department has changed the word "shall" to "should" at 937.7030 to make this clear. The clause is a "best efforts" clause, recognizing that the parties may not agree.

**List of Subjects in 48 CFR Parts 922, 937, 952, and 970**

Government procurement.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on June 29, 1993.

**Berton J. Roth,**

*Acting Director, Office of Procurement, Assistance and Program Management.*

## PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

1. The authority citation for part 922 of chapter 9 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. A new subsection 922.103–5 is added, as follows:

**922.103–5 Contract clauses.**

In accordance with FAR 22.101–1(e) and FAR 22.103–5, the contracting officer shall insert the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, in all solicitations and contracts for protective services at DOE owned facilities requiring continuity of services for public safety and national security reasons. The contracting officer may insert this clause in other solicitations and contracts where a significant need for continuity in contract performance exists. See 937.70, Protective Services Contracting, for additional policy guidance regarding protective services.

## PART 937—SERVICE CONTRACTING

3. The authority citation for part 937 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. A new subpart 937.70, consisting of 937.7010 through 937.7040 is added as follows:

**Subpart 937.70—Protective Services Contracting**

937.7010 Scope of subpart.
937.7020 Policy.
937.7030 Procedures.
937.7040 Contract clauses.

### Subpart 937.70—Protective Services Contracting

**937.7010 Scope of subpart.**

This subpart is applicable to contracts for the acquisition of protective services for DOE-owned facilities requiring continuity of operations to ensure public safety and national security.

**937.7020 Policy.**

Continuity of protective services at DOE-owned facilities is vital to the safety of DOE and contractor personnel, public safety, the preservation of DOE property, and national security. DOE believes that contractors providing protective services, their employees, groups representing such employees, the Department, and DOE personnel should cooperate to the maximum practical extent to assure continuity of such services.

**937.7030 Procedures.**

The importance of operational continuity at DOE-owned facilities dictates that protective service contractors when negotiating collective bargaining agreements, with their personnel, provide that grievances and

disputes involving the interpretation or application of the agreement be settled without resort to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties agree upon some other method of assuring continuity of operations for the term of the agreement. DOE expects its protective services contractors and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service.

**937.7040 Contract clauses.**

The contracting officer shall insert the clause at 952.237–70 entitled "Collective bargaining agreements—protective services" in all protective services solicitations and contracts involving DOE-owned facilities requiring continuity of services for public safety and national defense reasons. See also, 922.103–5, Contract clauses, which prescribes use of the clause at FAR 52.222–1, Notice to the Government of Labor Disputes.

## PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for part 952 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

6. Section 952.237–70 is added to read as follows:

**952.237–70 Collective bargaining agreements—protective services.**

As prescribed in 937.7040, insert the following clause:

**Collective Bargaining Agreements—Protective Services (XXX 1992)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations.

For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services.

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

7. The authority citation for part 970 continues to read:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

8. Section 970.2201 is amended by revising paragraph (b)(5)(ii) as follows:

**970.2201 Basic labor policies.**

* * * * *

(b) * * *

(5) * * *

(ii) Consistent with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at DOE-owned facilities should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement entered into during the period of performance of this contract should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operation for the term of the collective bargaining agreement. The contracting officer shall insert the clauses at FAR 52.222–1, Notice to the government of labor disputes, and 970.5204–63, Collective bargaining agreements—management and operating contracts, in all management and operating contracts, and subcontracts thereunder, which require continuity of operation at a DOE-owned facility.

* * * * *

9. Section 970.5204–63 is added as follows:

**970.5204–63 Collective bargaining agreements—management and operating contracts.**

As prescribed in 970.2201(b)(5)(ii), insert the following clause:

**Collective Bargaining Agreements—Management and Operating Contracts (XXX 1992)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

[FR Doc. 93–15751 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–P–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 74–09; Notice 32]**

**RIN 2127–AE81**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; response to petition for reconsideration.

**SUMMARY:** In response to petitions for reconsideration of a September 1992 final rule, this rule amends Federal Motor Vehicle Safety Standard (FMVSS) 213, *Child Restraint Systems*, to allow flexibility in the labeling required by that rule.

**DATES:** The changes made in this rule are effective August 5, 1993.

Any petition for reconsideration of this rule must be received by NHTSA no later than August 5, 1993.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and notice number of this rule and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–4919.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 10, 1992 (57 FR 41423), NHTSA published a final rule that amended Standard 213. The amendment required add-on (portable) child restraints to meet the requirements of the standard at each of the angles to which the seat back can be adjusted and at each of the restraint belt routing positions. The purpose of the amendment was to remove the possibility that an add-on child restraint could have an adjustment position that was unsuitable for motor vehicle use, i.e., a position in which the restraint could not comply with the standard.

Built-in restraints (restraints that are integral parts of a vehicle) were excluded from the requirement. Since built-in restraints are typically built into the vehicle seat, the seat back for a built-in restraint may also be the seat back of the vehicle seat in which it is built. If the vehicle seat back reclines, such a built-in restraint could fail to meet the standard with the seat back fully reclined. Thus, the effect of including built-in restraints in the amendment could have been to limit or even eliminate the reclinability of seat backs of vehicle seats that have built-in restraints. The agency did not believe there was sufficient reason to disallow the reclining feature of vehicle seat backs, since there was no information showing a safety problem with reclining vehicle/child restraint seat backs. Moreover, vehicle seat backs that recline to form a bed-like surface in passenger vans allow weary drivers and passengers rest at highway rest areas, and provide for easier loading.

However, the September 1992 final rule did adopt a labeling requirement for built-in restraints that were installed in vehicle seats with reclining seat backs. S5.5.5(g) of Standard 213 specifies:

> In the case of each built-in child restraint system which is not intended for use in the motor vehicle at certain adjustment positions, the following statement [shall be labeled on the restraint], inserting the manufacturer's adjustment restrictions. DO NOT USE THE _____ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT WHILE THE VEHICLE IS IN MOTION.

The purpose of the label is to ensure the built-in restraints are not used in ways that provide insufficient crash protection to children.

**Petition for Reconsideration**

Ford Motor Company petitioned for reconsideration of the labeling requirement for built-in child restraints. Ford requested that NHTSA amend S5.5.5(g) to allow manufacturers the flexibility of determining for themselves what would be appropriate wording for the restrictions on their restraint systems. Ford believed that S5.5.5(g) should not prescribe specific wording, because such wording can be "inappropriate for many circumstances" and thus confusing or misleading. For example, Ford said, some of its built-in child restraints are built into a vehicle seat back that folds rearward to form a bed for use when the vehicle is stationary. Ford said that the "bed" position is not intended as a child restraint adjustment position, and referring to it as such in the label could confuse consumers. Ford also believed that the prescribed wording can limit the flexibility of manufacturers to recommend certain adjustment positions of the child restraint under only limited circumstances. Ford stated:

> For example, a manufacturer may wish to recommend use of a reclined position of the vehicle seat back when the child restraint is being used in the child restraint mode, but warn against such a reclined vehicle seat position when the adult belt is being used to restrain a child.

Ford also wanted NHTSA to allow manufacturers to use upper and lower case lettering for the statement, instead of requiring the statement to be capitalized. Ford stated, "Upper and lower case lettering is generally preferred for labeling because of better readability." Ford said that in some vehicles, the use of all capitals may be confusing and could distract the consumer from other important warnings on the label.

**Agency Decision**

NHTSA has decided to amend S5.5.5(g) of Standard 213 to provide manufacturers flexibility in wording restrictions on the use of a built-in child seat, as Ford requested. The agency agrees with Ford that the statement currently prescribed in S5.5.5(g) might be too narrow to accommodate the various seating and adjustment positions of built-in child restraint systems. Allowing manufacturers flexibility in wording their restrictions on particular seating and adjustment positions will increase the likelihood that the restrictions will be accurately described and easily understood by the consumer.

However, NHTSA does not agree with Ford's request to remove the requirement that the wording must be capitalized. Standard 213 requires important safety messages on the proper use of the built-in restraint to be capitalized. These include a warning that the consequences of failing to follow the manufacturer's use instructions can result in the child striking the vehicle's interior in a crash (S5.5.5(g)), and directions on snugly adjusting the child restraint belts around the child (S5.5.5(h)) and on placing an infant rear-facing (S5.5.5(j)). The information on the restricted uses of the built-in child restraint is as important as these messages. Requiring the information to be capitalized is consistent with the present labeling requirement of S5.5.5 to capitalize such information, and increases the likelihood that the consumer will notice and read the information. In view of this, that part of Ford's petition on the use of capitalized letters is denied.

**Effective Date**

This amendment is effective in 30 days. An effective date earlier than 180 days after the date of issuance of this rule is in the public interest because this rule provides manufacturers flexibility in meeting the standard's requirements.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**Rulemaking Analyses and Notices**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minimal and that preparation of a full final regulatory evaluation is not warranted. The effects of today's rule are minor because it only provides manufacturers of built-in child restraint systems flexibility in wording

restrictions, if any, on the use of a built-in seat. The requirement to label the restraint with such restrictions is not affected by the rule.

*Regulatory Flexibility Act*

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Today's amendment on the labeling requirement for built-in restraints does not have a significant economic impact on a substantial number of small entities. To the agency's knowledge, there are only a few manufacturers of built-in systems that are small businesses. Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant, since the effects of today's rule only provides manufacturers of built-in child restraint systems flexibility in wording restrictions, if any, on the use of a built-in seat. The requirement to label the restraint with such restrictions is not affected by the rule.

The agency believes this rule has no impact on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

*Executive Order 12612*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

**PART 571—[AMENDED]**

In consideration of the foregoing, 49 CFR part 571 is amended as set forth below.

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation or authority at 49 CFR 1.50.

2. Section 571.213 is amended by revising S5.5.5(g)(2) to read as follows:

**§ 571.213 Standard No. 213, Child Restraint Systems.**

* * * * *

S5.5.5 * * *

* * * * *

(g) * * *

(2) In the case of each built-in child restraint system which is not intended for use in the motor vehicle in certain adjustment positions or under certain circumstances, an appropriate statement of the manufacturer's restrictions regarding those positions or circumstances, in capitalized letters.

* * * * *

Issued on June 30, 1993.

**Howard M. Smolkin,**

*Executive Director.*

[FR Doc. 93–15867 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 285

**[Docket No. 920407–2519; I.D. 061493A]**

### Atlantic Tuna Fisheries; Bluefin Tuna

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

**ACTION:** Readjustment of Angling category 1993 domestic Atlantic bluefin tuna quotas.

**SUMMARY:** NMFS announces that the domestic western Atlantic bluefin tuna category quotas are being readjusted to compensate for 1992 quota underharvests/overharvests, and to fine tune the subquotas with respect to regional allocations. This readjustment and fine tuning results in a revised 1993 Angling category quota breakdown as follows: School bluefin—98.2 metric tons (mt), and large school/small medium bluefin—205.3 mt. Furthermore, the school bluefin quota is subdivided as follows: New Jersey and areas north—36.7 mt, and Delaware and areas south—61.5 mt.

**EFFECTIVE DATE:** July 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, 301–713–2347.

**SUPPLEMENTARY INFORMATION:** Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended U.S. quota among the various domestic fishing categories.

If a quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.22(h) to subtract the overharvest from, or add the underharvest to, that quota for 1993; provided that the total of the 1992 harvest plus the 1993 adjusted quotas and the reserve does not exceed 2,497 mt. The Assistant Administrator is further required to publish in the **Federal Register** any amounts to be subtracted or added and the basis for the quota reductions or increases.

On June 14, 1993 (58 FR 32872), a quota adjustment notice was published, effective June 8, 1993, notifying the public that the Angling category had underharvested its 219 metric ton quota by 96.2 mt. New and final information indicates the actual Angling category underharvests/overharvests to be different than those reported. The difference is enough to warrant a readjustment of the Angling category quota. In addition, the 100-mt quota for school bluefin tuna needs to be adjusted on a subquota basis to reflect regional overharvests/underharvests.

In implementing the 1991 ICCAT recommendation to limit catch of school bluefin to 8 percent of the U.S. national quota, the 1992 Angling category quota of 219 mt was split into two subquotas: 100 mt of school fish (which is further split between New Jersey and areas north—53 mt, and Delaware and areas south—47 mt) and 119 mt of large school/small medium fish. Final 1992 Large Pelagic Survey (LPS) catch estimates indicate that the 100 mt of school bluefin tuna was overharvested by 1.8 mt. However, this overharvest occurred completely in the northern area, where the 53-mt subquota was exceeded by 16.3 mt. The southern area underharvested its quota by 14.5 mt. The total quota for large school and small medium bluefins was underharvested by 86.3 mt.

Readjusting the 1993 Angling category data to reflect the final LPS estimates, and the regional overharvest/underharvest of the school bluefin tuna quota, results in a revised 1993 Angling category quota breakdown as follows: School bluefin—98.2 mt, and large school/small medium bluefin—205.3 mt. Furthermore, the school bluefin quota is subdivided as follows: New

Jersey and areas north—36.7 mt, and Delaware and areas south—61.5 mt.

The intent of these actions is to prevent overharvest of the western Atlantic bluefin tuna catch quotas established for this fishery for the 1992–93 biennial period, while assuring that sufficient opportunity exists for fishermen to fill the 1992–93 U.S. ICCAT quota, and that optimum data are generated for scientific purposes from the catches.

### Classification

This action is required by 50 CFR 285.22(h) and complies with E.O. 12291.

### List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 28, 1993.

**Richard H. Schaefer,**

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

[FR Doc. 93–15855 Filed 7–2–93; 8:45 am]

BILLING CODE 3510–22–M

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## 50 CFR Part 646

**[Docket No. 930225–3146; I.D. 052493A]**

**RIN 0648–AE91**

## Snapper-Grouper Fishery of the South Atlantic

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

**ACTION:** Final rule.

**SUMMARY:** NMFS adopts as final without change an interim rule published March 2, 1993, which defined a sea bass pot; removed the existing definition of sea bass trap; allowed retention of fish caught incidentally in a sea bass pot; and made other technical changes. The intent of the fishery management plan without undue burden on fishermen, and to clarify the regulations.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** Snapper-grouper species off the southern Atlantic states, including sea bass, are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*).

### Sea Bass Pots

Amendment 4 to the FMP prohibited the use of fish traps in the snapper-grouper fishery but allowed the use of sea bass traps north of Cape Canaveral, Florida. To ensure that a sea bass trap would not be used in a directed fishery for snapper-grouper species other than sea bass, the regulations that implemented Amendment 4 limited a fisherman who used or possessed a sea bass trap in the EEZ north of Cape Canaveral on any trip to the bag limits for those snapper-grouper species that have bag limits, and to zero for all other species except sea bass. These possession limits caused an unanticipated economic hardship to fishermen in North Carolina and South Carolina who had traditionally fished with sea bass traps and other gear on a single trip. To address this economic emergency, the Council requested, and NMFS published, an emergency interim rule, effective August 31, 1992, through November 30, 1992, that established a definition of "sea bass pot," based principally on size, and removed the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North and South Carolina (57 FR 39365, August 31, 1992). Upon the request of the Council and with the concurrence of NMFS, effectiveness of the emergency interim rule was extended through February 28, 1993 (57 FR 56522, November 30, 1992).

The Council initiated action under the FMP's framework procedure for establishing or modifying management measures, including gear restrictions, to establish a definition of sea bass pot, remove the definition of fish trap, remove the incidental catch restrictions for fishermen using sea bass pots, and extend the benefits of the emergency rule throughout the range of allowed use of sea bass pots, that is, from Cape Canaveral through North Carolina. These measures were implemented by interim final rule with a request for comments, effective March 1, 1993 (58 FR 11979, March 2, 1993).

### Longlines

The regulations specify that a longline may not be used to fish in the snapper-grouper fishery in the EEZ where the charted depth is less than 50 fathoms (91.5 m) (50 CFR 646.229(g)(1)). Similarly, a bottom longline may not be used to fish for wreckfish (50 CFR 646.22(g)(2)). In both cases, one of the criteria for determining whether a longline is aboard is possession of a "cable" of diameter suitable for use in the longline fishery. The interim final rule clarified that monofilament or cable may be considered a longline for purposes of the prohibition on using a longline to fish in the snapper-grouper fishery where the charted depth is less than 50 fathoms (91.5 m). In the wreckfish restriction, the criterion remains unchanged and, thus, precludes any presumption that monofilament is cable for the purposes of that restriction.

### Charter Vessels and Headboats

The interim final rule also removed unnecessary language regarding the requirement to have two licensed operators aboard as a condition for a charter vessel or headboat to possess more than one daily bag limit of snapper-grouper species.

Additional background and rationale for these actions were included in the interim final rule and are not repeated here.

### Comments

No comments were received on the interim final rule. Accordingly, it is adopted as final without change.

### Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect 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.

The Council prepared a regulatory impact review (RIR) for the framework portions of this final rule, that is, the sea bass pot measures. A summary of the overall net economic benefits in that RIR was included in the interim final rule and is not repeated here. The nonframework portions of this final rule are minor and technical and do not change the regulatory impacts that were previously reviewed and analyzed.

The General Counsel of the Department of Commerce certified to the Small Business Administration that

this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis was prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of the sea bass pot measures in this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of those measures in this final rule. Other measures in this final rule do not change any of the factors considered in the environmental impact statement prepared for the FMP or in the EAs prepared for its amendments; accordingly, these measures are categorically excluded from the requirement to prepare an EA, as specified in NOAA Administrative Order 216–6.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, North Carolina, and South Carolina. Georgia does not participate in the coastal zone management program. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. The state agencies agreed with this determination.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

**List of Subjects in 50 CFR Part 646**

Fisheries, Fishing, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the interim final rule amending 50 CFR part 646, which was published at 58 FR 11979 on March 2, 1993, is adopted as final without change.

Dated: June 28, 1993.

**Nancy Foster,**

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

[FR Doc. 93–15743 Filed 7–2–93; 8:45 am]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 93–AGL–8]

### Proposed Establishment of Class E Airspace; Mt. Sterling, IL.

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class E airspace near Mt. Sterling, IL to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace". The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before August 20, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–8, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcare on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Mt. Sterling, IL, to accommodate a new VOR–A instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL.

The development of this procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in § 71.71(c) of FAA Order 7400.9 dated November 1, 1991, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

**PART 71—[AMENDED]**

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 17.1 of the Federal Aviation Administration Order 7400.9, Airspace Reclassification, dated November 1, 1991, and effective September 16, 1993, is amended as follows:

*Section 71.71(c) Transition areas*

* * * * *

AGL IL E5 Mt. Sterling, IL [New]
Mt. Sterling Municipal Airport, IL
(lat. 39°59'15" N, long. 90°48'15" W)
Quincy VORTAC
(lat. 39°50'53" N, long. 91°16'44" W)

That airspace extending upwards from 700 ft. above the surface within a 5-mile radius of Mt. Sterling Municipal Airport, IL, and within 2.5 miles each side of the VORTAC 069 radial, extending from the 5-mile radius area to 6-miles west of the airport.

* * * * *

Issued in Des Plaines, Illinois on June 21, 1993.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 93–15845 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 93–AGL–12]**

## Proposed Establishment of Class E Airspace; Manitowish Waters, WI.

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class E airspace near Manitowish Waters, WI, to accommodate a new Nondirectional Beacon (NDB) approach procedure at Manitowish Waters Airport, Manitowish Waters, WI. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace". The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before August 20, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) 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) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Manitowish Waters, WI, to accommodate a new NDB approach procedure at Manitowish Waters Airport, Manitowish Waters, WI.

The development of this procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace".

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airplanes docket are based on North American Datum 83. Class E airspace designations are published in Section 71.71(c) of FAA Order 7400.9 dated November 1, 1991, and effective September 16, 1993, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subject in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

**PART 71—[AMENDED]**

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 17.1 of the Federal Aviation Administration Order 7400.9, Airspace Reclassification, dated November 1, 1991, and effective September 16, 1993, is amended as follows:

*Section 71.71(c) Transition areas*

* * * * *

AGL WI E5 Manitowish Waters, WI [NEW]
Manitowish Waters Airport, WI
(lat. 46° 07′ 18″N, long. 89° 53′ 03″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Manitowish Waters, WI, Airport.

* * * * *

Issued in Des Plaines, Illinois on June 21, 1993.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 93–15846 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–13–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**14 CFR Part 1272**

**Procedures for NASA Drug Testing and Alcohol Testing Programs**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) is proposing rules to implement the Civil Space Employee Testing Act of 1991 ("the Act"), which requires an alcohol testing program and changes the drug testing program at NASA to include preemployment testing and split sample collection method.

**DATES:** Comments must be submitted in writing on or before September 7, 1993.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Chief, Agency Personnel Policy Branch (Code FPP), NASA Headquarters, 300 E Street SW., Washington DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Torres, (202) 358–1219.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 9, 1991, President Bush signed the Civil Space Employee Testing Act of 1991 ("the Act"), section 21 of Public Law 102–195, NASA Authorization Act, FY 1992, (42 U.S.C. 2473c). The Act requires NASA to prescribe regulations within 18 months that require testing of employees conducting safety-sensitive, security, and National security functions for use, in violation of law or Federal regulation, of alcohol and drugs listed in the Controlled Substances Act. The Act preempts inconsistent state and local laws, and requires that the regulations be consistent with U.S. international obligations. It specifically mandates, among other things, privacy in collection techniques, incorporation of the Department of Health and Human Services (DHHS) mandatory guidelines for drug testing and comparable safeguards for alcohol testing, quantified confirmation of any initial positive result, collection of split samples of body fluid specimens, confidentiality of test results, and scientifically random selection of employees to be tested. It requires preemployment, random, post-accident, and reasonable suspicion testing; periodic testing is discretionary. Regulations prescribed under the Act must include provisions for the identification of, and opportunity of treatment for, covered employees in need of assistance due to misuse of alcohol or controlled substances. The Act states that current Federally mandated programs are unaffected by the new statutory requirements.

At the time of the enactment of the Act, NASA already had implemented a Drug-Free Workplace Program (DFWP) as mandated by Executive Order 12564, dated September 15, 1986, and section 503 of Public Law 100–71, dated July 11, 1987, to govern drug testing and address the use of illegal drugs by NASA employees.

As noted above, the Act requires certain changes to the existing NASA drug testing rules (e.g., it requires split sample collections and preemployment testing regulations, neither of which are currently mandated by Executive Order 12564 or Section 503 of Public Law 100–71). Therefore, the current NASA Management Instruction (NMI) 3792.3 "NASA Plan for a Drug-Free Workplace," (an internal program document) will continue in effect for the NASA employee drug testing program, which adheres to the requirements of the Act. This Proposed Rule will only include the new drug testing (i.e., split sample collections and preemployment) and alcohol requirements not currently mandated for NASA employees by Federal regulation.

**Starting Date for Drug and Alcohol Testing in This Proposed Rule**

The Agency would have 1 year from the effective date of the final rules in which to implement the requirements.

**Requirements for Notice**

Before performing an alcohol test under these rules, the Agency must notify the employee being tested that the alcohol test being administered is required by these rules. The notice may be oral or written. Employees are free to consume alcohol on their own time so long as that consumption does not violate any of the provisions of these rules or other applicable rules.

**Alcohol Testing Summary**

In general, the proposed rules would prohibit covered employees from performing safety-sensitive, security, or National security functions: (1) When test results indicate breath alcohol concentration of 0.04 or greater; and (2) If they refuse to submit to required alcohol tests. The Agency would have to remove from a safety-sensitive, security, or National security duties any covered employee who violates any of these prohibitions until he or she has met the conditions for returning to such functions. The proposed rule would

require the Agency to conduct preemployment, reasonable suspicion, post-accident, and random, alcohol testing with evidential breath testing devices. Periodic testing is discretionary. They would also provide for alcohol related educational information for employees, supervisor training and referral of employees to employee assistance programs (EAP's).

**Alcohol Testing-Overview**

*Subpart II—Alcohol Testing*

This subpart sets forth the alcohol testing procedures that the Agency would implement. Persons familiar with the Agency's drug testing rules will notice some similarities between those rules and the proposed alcohol testing procedures. The Agency is proposing rules concerning the collection site and the collection site person (called the "alcohol testing site" and the "breath alcohol technician (BAT)," respectively, in the alcohol testing procedures), a testing form, preparation for and administration of initial and confirmatory tests, confidentiality, safeguarding, test records, what to do if an employee cannot provide an adequate amount of breath, and what errors in the process are "fatal flaws" that invalidate a test. Except for the "fatal flaws" section, all these provisions have parallels in the drug testing procedures.

The differences between this subpart and the drug testing procedures are equally noteworthy. The drug testing procedures call for the donation of a quantity of urine, packaging, transmission to a National Institute on Drug Abuse (NIDA) certified laboratory for testing, and the use of an evidentiary chain of custody. A medical review officer is used to interpret laboratory results, so as not to label someone who has legitimately ingested a substance as an illegal drug user.

The alcohol testing procedures would use breath for purposes of determining the alcohol concentration as measured by a breath testing device that provides a definitive, quantitative result at the alcohol testing site. Therefore, packaging, chain of custody, and transmission rules are not needed. No testing laboratories would be involved; and, therefore, there would be no need for laboratory certification or procedure rules. Because the issue to be determined is whether an impermissible quantity of a legal substance (ethyl alcohol) is in the person's system—whether it comes from use of an alcoholic beverage or medication—a medical review officer to interpret the results would not be needed. The result is that these alcohol testing procedures would be shorter and less complex than the drug testing procedures.

As the foregoing discussion suggests, perhaps the most important decision underlying these proposed procedures is to rely exclusively on breath testing, rather than involving testing of blood or urine specimens, or evaluations of motor or cognitive functions as part of the process. The Agency believes that the choice of breath testing is consistent with its commitment to an accurate and fair testing program.

Analysis of breath for alcohol (specifically ethanol) has been practiced for many years in the clinical diagnosis of intoxication and for traffic law enforcement purposes. In light of the use of breath test devices for law enforcement purposes, the National Highway Traffic Safety Administration (NHTSA) developed Guideline Specifications (49 FR 48855; December 14, 1984) to ensure that the equipment meets certain minimum performance specifications.

Instruments meeting the NHTSA specifications are included in a "Conforming Products List of Evidential Breath Testing Devices" (CPL) which is used in the purchase of instruments for law enforcement purposes. Instruments on this list enjoy wide acceptance in the judicial community and have met court scrutiny for precision and accuracy. These instruments are reliable in measuring an accurate alcohol concentration from breath, as long as the operator is appropriately trained and the instrument is maintained in accordance with the manufacturer's guidelines.

The precision and accuracy of the instruments, combined with their judicial acceptance, make breath testing instruments of evidential quality the most appropriate method to use in testing for alcohol misuse for the Agency. Breath tests provide an immediate result. Results are obtained nearer to the time at issue than is possible with blood testing. This is a significant advantage in that it enables the Agency to remove an employee who tests positive from performing safety-sensitive, security, or National security duties quickly.

Chain of custody issues that would arise with blood testing do not arise in breath testing. The need for special collection facilities, certified testing laboratories, and the use of medically trained personnel would not be necessary for breath, as opposed to blood testing. The operating cost per test is also lower. Breath tests are much less intrusive than blood tests, from the employee's point of view.

Also, properly conducted breath tests can accurately reflect the alcohol content of the pulmonary arterial blood which, in the initial or absorption phase of alcohol assimilation, gives a truer picture of alcohol influence on the central nervous system than a venous blood sample. In the post-absorptive phase, a quantitative breath test result will yield comparable results to blood analysis (arterial or venous).

This is not to say that blood testing is not a legally valid means of establishing alcohol concentration, on the basis of which it is appropriate to take action with respect to an employee. The validity of these procedures which are subject to evidentiary hearings, has long been recognized in administrative and court proceedings, and it is not brought into question by the Agency's proposal to use breath testing.

*Section 1272.402 Definitions*

The proposed subpart would define several terms that are used only here, or used in a different sense than in the drug context. "Air blank" would be defined as a test of ambient air. "Alcohol" would refer to ethyl alcohol, in whatever form. The proposed rule regards alcohol in the system, whatever its source. Someone who registers 0.04 concentration as the result of use of a product containing alcohol, even if for medical purposes, is no less impaired than he or she would be at the same alcohol concentration after drinking an alcoholic beverage.

The rule would use the term "alcohol concentration." The more familiar "blood alcohol concentration" could be misleading, since these procedures do not call for the use of blood. The concentration is expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath testing device.

"Collection site," "initial test," and "confirmation test" all are terms used in the drug testing portion of the Part 1272. Separate alcohol testing specific definitions are used here, however. The "breath alcohol technician" (BAT) is analogous to the collection site person under the drug testing procedures, and "alcohol testing site" is analogous to "collection site."

An "evidential breath testing (EBT) device" is any breath testing device that NHTSA has approved and put on its conforming products list. It is not relevant for purposes of this rule whether the courts in any particular state have accepted a given device for use in driving under the influence (DUI) or other legal proceedings in that state. As a matter of Federal law, NHTSA-approved EBT's would be used for all

tests under these rules, regardless of the status of a device under state law.

An "invalid" test is one which has been declared invalid under the provisions of subpart 1272.513. It is neither positive nor negative. The concept is similar to that of a canceled test in the drug testing procedures. For example, if a negative test is needed before a worker may begin performing a safety-sensitive, security, or National security function, an invalid test would not suffice, and the employee would have to have another test conducted. Likewise, if a test result of 0.04 or higher is declared invalid, the consequences of the test result would not apply.

*Section 1272.505 Breath Alcohol Technician (BAT)*

To ensure that tests are conducted properly and accurately, each BAT would have to be trained to proficiency in the use of the particular EBT he or she would operate and in following properly the procedures in this part. The proposed rule proposes that the training would have to cover several elements, including operation and methodology of the breath testing instrument, the specific procedures of this rule, and where needed, performing checks of external calibration on the EBT.

To ensure that the BAT is trained to proficiency, the proposed rule would require that each course of instruction contain a "hands on" or practical application component that clearly demonstrates the BAT's ability to properly use the EBT to produce an accurate result, in accordance with the procedures outlined in this rule. If the BAT is also going to perform checks of external calibration of the EBT, proficiency in doing so would have to be demonstrated. The Agency would maintain records of BAT training and proficiency. The rule further proposes that courses of instruction consistent with the NHTSA model course for EBT operator training, or other state-approved courses for breath testing device operators may be used to meet the training requirement.

The proposed rule proposes that a direct supervisor of the employee being tested could not, in ordinary circumstances, be the BAT, in order to avoid any appearance of bias. However, if it is impracticable for anyone else to do the job, an Agency representative could do so, where not prohibited by operating rules (e.g., with respect to reasonable suspicion tests).

One issue that has occurred to the Agency is that it would adversely affect the perception of the integrity of the process, and perhaps the defensibility of individual tests, if the BAT were intoxicated at the time of testing or had been seen consuming alcohol prior to conducting tests. Consequently, the BAT is required to be below the Agency's predetermined level for the use of alcohol while on duty. Violation of this requirement would render the BAT ineligible to conduct individual tests.

*Section 1272.506 Devices to be Used in Alcohol Testing*

The Agency proposes that evidential breath testing devices (EBT's) used in meeting the requirements of this rule would have to be listed on the Conforming Products List (CPL) published periodically by NHTSA. The CPL is published in the **Federal Register** and updated periodically as new technology and changes to breath testing instruments warrant. For many years, NHTSA has evaluated and field tested breath testing devices for their technical and scientific capabilities for use in law enforcement as evidential tests of breath alcohol content. By inclusion on the NHTSA CPL, a given model of breath testing devices is certified as providing accurate and reliable results. In addition to being listed on the NHTSA CPL, EBT's used to meet the requirements of this rule would have to have certain other capabilities relevant to specific provisions of the rule.

First, the EBT (itself, or via a separate printer that would be present at the collection site) would have to be able to print three copies of each test results (either simultaneously or consecutively). Second, the EBT's would also have to number each test sequentially, with the numbers visible to both the BAT and the employee before each test and printed out on the result. The purpose of this requirement is to identify each test result as pertaining to a specific employee. In effect, the employee's signature on the form prior to the test would signify "I am about to take test No. 243." The test result would say "Test No. 243."

Third, the EBT would also have to be able to do an "air blank" or test of the ambient air to ensure that when nobody was breathing into the instrument, it reported zero. An air blank, in other words, is a check of internal calibration. This check of internal calibration of the instrument, conducted both immediately prior to and immediately following each breath test further ensures the accuracy of the result. The EBT would also have to be able to generate printed records of the air blanks along with each test result. Fourth, an EBT would have to be capable of performing a check of external calibration (i.e., a test of its ability to produce a quantitative result consistent, within a given tolerance, of a known alcohol concentration standard).

Checks of external calibration of the instrument using known alcohol concentration standards are essential to validating the accuracy of the EBT. Each EBT model used to meet the requirements of this rule would have to have a Quality Assurance Plan (QAP) provided by the manufacturer and approved by NHTSA. The QAP would specify the manufacturer's recommended methods and frequency for checks of external calibration. This rule also proposes that EBT's would have to be capable of distinguishing ethyl alcohol from acetone at the 0.04 or greater level.

The Agency would inspect, maintain, and calibrate EBT's. The work would have to be performed by the manufacturer or a certified representative of the manufacturer. BAT's who have completed specific training in calibration and maintenance of EBT's may perform such duties. Records of calibration and maintenance would have to be maintained for 3 years, a period of time equivalent to the retention of positive test records.

Each EBT manufacturer would have to develop and submit to the Agency a QAP for each NHTSA CPL approved EBT model used by the Agency. This plan would tell the Agency how and when to perform checks of external calibration, taking into account variations in EBT use that would affect the frequency of such checks (e.g., stationary vs. mobile use, high vs. low temperature, and low vs. high numbers of tests). The QAP would establish tolerances for each instrument that define the acceptable limits of deviation from the known alcohol concentration standards. Other inspection, maintenance, and calibration requirements would also be stated. If an external calibration check revealed that the EBT was out of calibration, the Agency would have to take the EBT out of service and fix the problem before the device could be used again for its mandated employee testing. The EBT would be securely stored when it is not being used. The purpose of this is to prevent anyone from tampering with the device.

*Section 1272.507 The Alcohol Testing Site*

The requirements for an alcohol testing site are less detailed than the drug testing collection site rules. The site must afford aural and visual privacy

to the person being tested, to protect the confidentiality of the process. Any number of arrangements could satisfy this performance criteria, such as a room, a van, or a partitioned-off area. While testing is going on, or when the EBT is present, the site must be able to be secured. Essentially this means that the BAT must have the EBT under his/her control at all times and be able to limit access to the testing area to authorized personnel. For example, while a temporary partition might meet the privacy requirements, it may or may not meet the security and control requirement.

One exception to collection site requirements would be a situation in which meeting all privacy requirements would be impractical, and a test would not happen at all unless it happened in a nonconforming site. We propose this exception only for unusual, spur-of-the-moment situations (like a post-accident test that could not be conducted in a timely manner if all privacy requirements had to be met), not for regular, predictable, matter of course situations. The BAT would provide privacy protection for the employee to the maximum extent feasible.

The BAT, in order to avoid potential mistakes, could administer only one breath test at a time. This refers to actual operation of the EBT only. Assuming that adequate privacy could be maintained, other employees could be waiting, filling out forms, observing the 15-minute waiting period before a confirmatory test, etc. The BAT is also prohibited from leaving the collection site while the testing process is under way, including the waiting period.

*Section 1272.508 The Alcohol Testing Form*

This section would mandate the use of one of the two types of testing forms. One type of form is generated by the EBT and would contain all the necessary identification data, space for required signatures, and breath test results specified in this subpart. The other form would be used when the EBT prints only the test result and this result is then attached to a standard form containing the test identification data and signatures and other required information specified in this subpart. The forms would not be altered or customized, so that all alcohol testing forms used Agencywide under the rules incorporating Part 1272 would be standard. The form would be produced in triplicate, with copies to the employee, the Agency, and the BAT. The form, whether EBT-generated or a standard printed form, would contain the date and time, sequential test number, employee identifying data, BAT identifying data, and certification statements about the test with signatures by the employee and the BAT.

*Section 1272.509 Preparation for Testing*

The pre-testing procedure would be a relatively simple one. After presentation of identification by the employee (and by the BAT, if requested), the BAT would explain the testing procedures and tell the employee what is required. The BAT and the employee would fill out the testing form and sign it. This would include entering the sequential number of the test that the device indicates is about to be taken.

If the employee refuses to take the test (i.e., by refusing to sign the form or provide breath, or otherwise preventing the test from taking place), the BAT would note the refusal on the form, stop the testing process for that employee, and immediately inform the employer. The employer should provide the BAT with instructions concerning the employee's leaving the collection site.

The proposal would also direct the BAT to start a new test if, for some reason, an event occurred to invalidate the test. For example, if, after the initial test, the second post-test air blank did not show a 00.00 reading, the BAT would run a new initial test using a new sequential number. If a similar event happened on a confirmatory test, the BAT would start a new form for the confirmatory test with the new sequential number and affix it to the form used for the valid initial test.

*§ 1272.510 Administration of the Initial Test*

The first part of the testing process would be to make sure that the EBT is operating properly with respect to detecting the presence of alcohol. In the employee's presence, the BAT would do a "dry run" operation of the EBT by conducting an "air blank" test (e.g., a test of the ambient air, assumed to contain no ethyl alcohol). If the device reads anything other than a zero (0.00), the BAT would know something was wrong. If the initial attempt at conducting an air blank test fails (e.g., the EBT registers something other than 0.00) the BAT could re-run the air blank once more. The test of the employee would not proceed unless a 0.00 reading was obtained. If the instrument again fails to provide a 0.00 result on the air blank, the EBT cannot be used for testing until a check of external calibration is conducted and the instrument is found to be within the tolerance limits on a known alcohol standard of 0.00.

Next, the BAT, in the presence of the employee, would take an individually-sealed mouthpiece (for the sake of sanitation and to avoid any possible contamination of the mouthpiece by alcohol from previous users) and place it into the EBT. In order to get a sufficient quantity of deep lung air, the employee would be instructed to blow into the mouthpiece for at least 6 seconds, or until the EBT indicates that an adequate amount of breath has been obtained. If the employee could not produce an adequate amount of breath, the procedures of § 1272.53 would apply.

Immediately following the testing of employee's breath, a post-test air blank would also have to be performed, to ensure that the device reads 0.00 after the breath test. Once again, if the instrument did not provide a 0.00 reading on the air blank, the BAT may attempt one additional air blank. If a 0.00 reading still was not obtained, use of the EBT would be discontinued and the previous breath result would be invalid. Both the pre- and post-test airblank results would be printed out and attached to the alcohol testing form.

If the EBT does not print the test result directly onto the testing form, the resulting printout would be attached to the form in the place provided with some means that would show clear evidence of removal (e.g., tamper-evident tape). The BAT and employee would again sign the form, citing the sequential test number. (However, if the employee refuses to sign, it would not be considered a refusal to be tested, since the employee has in fact taken the test). If the employee does refuse to sign the form after the result is obtained, the BAT should so note on the form in the remarks section.

In the event the printed result does not match the result displayed on the EBT, the employees and the BAT would both initial or sign a record of such disparity on the form. The test result would be invalid. If an error malfunction of the EBT equipment is immediately detected by the BAT, the BAT would start over and immediately administer another test.

If the result is less than 0.04, the test is "negative." The BAT would report the negative result to the employer. Notification of negative test results may be done telephonically or electronically, but must be followed up with the employer's copy of the testing form. If the result is 0.04 or greater, a confirmatory test would be needed.

The Agency notes that, under the alcohol testing legislation, the initial test need only indicate the consumption of alcohol. It is not statutorily required

that the initial test be of evidential quality, produce a quantitative result, or have elaborate safeguards. Consequently, it would be legally possible, under the statute, for the Agency to permit the use of other testing techniques (e.g., nonevidential breath testing devices) for initial tests, so long as they were capable of identifying alcohol concentration of 0.04 or greater.

The consequences of "false negatives," which may occur with some nonevidential techniques, present serious safety, security or National security concerns. The Agency believes, in addition, that use of nonevidential testing methods would make little sense in the context of this rule. An EBT would have to be available to conduct a confirmatory test very shortly (within 30–60 minutes) after a "positive" initial test in any case. For this reason, the cost of EBT availability, would have to be incurred and would have to include a properly trained BAT. It would probably be less expensive to use the EBT that is already there for the initial, as well as for the confirmatory test than to use other technologies. Use of EBT technology on the initial as well as any required confirmatory test provides the additional advantage of a more scientifically accurate, sensitive, and specific test result for alcohol content on all tests conducted. Use of nonevidential methods for testing also raises issues of how to document test results and how to prevent fraudulent or "doctored" records of employer compliance with testing requirements. In particular, disposable testing methods present problems in ensuring that initial test results of employees who are in violation of the alcohol misuse standards are not ignored and that the evidence of such violation hidden or destroyed.

This discussion is in the context of an extensive, multi-modal testing program, including random testing as well as testing triggered by reasonable suspicion or the occurrence of an accident. Greater protection is needed in such a program, especially in the absence of procedural protection present in some existing programs that may use nonevidential testing methods in some circumstances. For example, the Coast Guard post-accident alcohol testing program can involve an administrative proceeding at which the employee has the opportunity to challenge test results before a license is revoked or an investigative inquiry at which further evidence could be introduced. In any event, the use of nonevidentiary alcohol testing devices alone would not meet the statutory requirement for verification in the testing program proposed by these proposed procedures.

*Section 1272.511 Administration of the Confirmatory Test*

The confirmatory test could be a second test on the same EBT as the initial test. The statute does not require that the confirmatory test use a different technology. The Agency believes that the reliability of EBT's on the NHTSA CPL is such that using the same device would have no adverse effect on the accuracy of tests. In order to guard against any possibility of alcohol on the used mouthpiece affecting the result of the confirmation test a new mouthpiece would be used for the confirmation test.

Before the confirmatory test, a 15-minute waiting period would be observed. The purpose of the waiting period is to ensure that the presence of mouth alcohol (residual alcohol present in the mouth from the recent use of food, tobacco, or hygiene products) does not artificially raise the test result. The BAT would instruct the employee to avoid actions that could increase mouth alcohol (i.e., using tobacco products, mouthwash, breath spray, cough drops, lozenges, or other food or medicinal products containing alcohol) during the waiting period. The test would proceed even if the employee disregards the instructions, however, since they are for the employee's protection. This rule proposes that the 15-minute waiting period be observed before the confirmatory test rather than before the initial test as a means to reduce lost time and costs in administering the testing program. Since no adverse actions may be imposed on the basis of the initial results, the employee protection afforded by the waiting period are only necessary for the confirmation test. It is assumed that the vast majority of employees will not have permissibly consumed alcohol immediately prior to testing and that the time necessary to prepare for the initial test and complete the form will, in fact, provide ample opportunity for residual mouth alcohol to dissipate. A 20-minute maximum for the waiting period, between initial and confirmation tests is proposed. The purpose of establishing a maximum limit for the waiting period is to prevent the manipulation of confirmation results by affording time for the metabolism of alcohol so that results will be lower than first recorded on the initial test.

Confirmation test results should only be higher than initial test results when an employee has very recently consumed alcohol and is in the absorption phase of alcohol metabolism. The Agency believes that the proposed requirements for pre- and post-test air blank readings on initial and confirmation tests provides sufficient safeguards for ensuring the internal calibration of the instruments.

Typically, under proposed operating administration rules, a confirmed result of 0.04 alcohol concentration or greater requires the employer to remove the employee from performing his or her safety-sensitive, security, or National security duties (Consequence A). Someone who tests negative (less than 0.04) may continue to perform safety-sensitive, security, or National security duties (Consequence B). The proposed rule proposes that when the confirmation result is different from the initial test result, the lower of the two results be used for the purpose of determining consequences. For example, if the confirmation result is below 0.04, even though the initial test result was greater than 0.04, the employee may continue to perform safety-sensitive, security, or National security duties (Consequence B). Under the proposed rule proposal to rely on the lower of the two EBT test results for the assignment of consequences, the following outcomes would occur:

| Initial test | Confirmation test | Consequences |
|---|---|---|
| 0.04 or greater | 0.04 or greater .. | A |
| 0.04 or greater | Less than 0.04 .. | B |
| Less than 0.04 | None ..... | B |

This section also proposes a procedure for notification of the employer of test results by the BAT. The proposed procedures address the timeliness and methods of transmitting this information.

*Section 1272.512 Inability to Provide an Adequate Amount of Breath*

What happens if the employee allegedly cannot, because of a medical condition, provide sufficient breath to result in a valid test? (This problem is analogous to the "shy bladder" problem in drug testing.)

First, the employee would have to attempt to provide sufficient breath. This means that the employee would have to attempt to breathe into the EBT. Failure to attempt to provide breath is treated as a refusal to be tested, and the BAT would note such failure to attempt the test on the testing form and immediately notify the employer. If the employee attempts to provide breath and is unable to do so (e.g., cannot sustain a breath long enough, or cannot provide sufficient deep lung air) the BAT would so note on the form and immediately notify the Agency, who

would direct the employee to seek a medical evaluation to document his/her inability to provide a breath sample due to medical reasons. The evaluation would have to be done by a physician acceptable to the employer, in order to help maintain the integrity of the process (i.e., to help prevent a situation in which the employee selects a physician who could reasonably be viewed as being biased in favor of the employee). The provision is not intended to allow the Agency to arbitrarily veto the use of a physician other than one preferred by the Agency. The physician would answer one basic question: Does the employee have a medical condition which has, or with a high degree of probability could have, precluded the employee from providing an adequate amount of breath? If yes, there is no "refusal." If no, the employee is deemed to have refused the test. The employee should be prohibited from performing safety-sensitive, security, or National security duties until the medical evaluation is conducted, the physician's determination made and reported to the Agency.

It should be noted that this inquiry by the physician would be on a case-by-case, test specific basis. Physicians would not, under this provision, be authorized to issue a blanket statement that an individual was permanently unable to provide an adequate amount of breath. Such a statement could amount to a waiver from the testing requirement, which would be contrary to the objectives of the Act.

*Section 1272.513 Invalid Tests*

This section proposes a list of "fatal flaws" in the testing process, any one of which would invalidate a test. Other testing procedures errors do not necessarily invalidate a test.

Most of these items are self-explanatory. Failing to observe the 15-minute minimum, should invalidate a test. Our view at this time is that the 15-minute minimum waiting period is essential to protect the employee's right to a fair and accurate test. Any failure to provide at least the 15-minute waiting period before the confirmation test would result in the confirmation result being invalid. Because the 20 minute maximum on the waiting period is not an employee protection procedure (in fact, additional delay could be helpful to employees), if the waiting period between tests exceed 20 minutes, the confirmation test would remain valid. If the BAT notices a potentially fatal error in the testing process (e.g., the BAT has failed to sign the form or has failed to sign the form or has failed to run a post-test air blank), before the employee has left the alcohol testing site, the BAT should be able to direct the employee to take another test to correct the problem.

One "fatal flaw" that could create difficulty is a situation in which a check of external calibration indicates that the instrument is not properly calibrated. In this situation, all positive results back to the last check of external calibration that established the instrument's accuracy would be invalidated. The proposed rule proposes that more frequent external calibration checks than required by the manufacturer's QAP be conducted. An external calibration check should be conducted after every positive to mitigate problems for subsequent personnel actions. This will eliminate a number of problems in the administration of the program and Agency's personnel decisions. Since confirmed results are available immediately and once notified, the Agency is required to take action prohibiting the performance of safety-sensitive, security, or National security duties by employees who are found to have violated the alcohol misuse standards, tests invalidated at a later date may result in the reversal of personnel actions, including a restitution of back pay, if an external calibration check is not conducted after every positive.

*Section 1272.515 Availability and Disclosure of Alcohol Testing Information About Individual Employees*

This section would be parallel to similar material in the drug testing procedures. The general rule is that information is confidential and may not be released to third parties without the employee's written consent. The Agency could release information in the context of a proceeding relating to an employee benefit or to Agency sponsored action against the individual.

*Section 1272.516 Maintenance and Disclosure of Records Concerning EBT's and BAT's*

This section would require the Agency to ensure that the records of the inspection, maintenance, and calibration of EBT's, compliance with the manufacturer's QAP, and records of the training and proficiency of BAT's are maintained.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 51 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

**List of Subjects in 14 CFR Part 1272**

Government employees, Drug testing, Alcohol testing.

For the reasons set out in the preamble, 14 CFR part 1272 is proposed to be added to read as follows:

## PART 1272—PROCEDURES FOR NASA DRUG TESTING AND ALCOHOL TESTING PROGRAMS

### Subpart A—Drug Testing: General Provisions

Sec.
1272.100 Applicability.
1272.102 Purpose.
1272.103 Definitions.
1272.104 Collective bargaining.

### Subpart B—Drug Testing: Specimen Collection Procedures

Sec.
1272.200 Specimen collection procedures.
1272.201 Laboratory personnel and analysis procedures.
1272.202 Reporting and review of results.
1272.203 Protection of employee records.
1272.204 Use of DHHS—certified laboratories.

### Subpart C—Drug Testing: Preemployment Testing Procedures

Sec.
1272.300 Preemployment drug testing.
1272.301 Identification of testing designated positions for preemployment.
1272.302 Drugs for which preemployment testing is performed.
1272.303 Specimen collection, handling, and laboratory analysis for preemployment drug testing.
1272.304 Medical review of results of preemployment tests for illegal drug use.
1272.305 Action pursuant to a determination of illegal drug use.
1272.306 Records.

### Subpart D—Alcohol Testing: General Provisions

Sec.
1272.400 Applicability.
1272.401 Purpose.
1272.402 Definitions.
1272.403 Collective bargaining.

### Subpart E—Alcohol Testing: Procedures

Sec.
1272.500 Employee assistance, education, and training.
1272.501 Random alcohol testing and identification of testing designated positions.
1272.502 Applicant alcohol testing.
1272.503 Alcohol testing as a result of an accident.
1272.504 Alcohol testing for reasonable suspicion.
1272.505 Breath alcohol technician.
1272.506 Devices to be used in alcohol testing.
1272.507 The alcohol testing site.

Sec.
1272.508 The alcohol testing form.
1272.509 Preparation for testing.
1272.510 Administration of the initial test.
1272.511 Administration of the confirmatory test.
1272.512 Inability to provide an adequate amount of breath.
1272.513 Invalid tests.
1272.514 Action pursuant to a determination of alcohol at the predetermined level.
1272.515 Availability and disclosure of alcohol testing information about individual employees.
1272.516 Maintenance and disclosure of records concerning EBT's and BAT's.

**Authority:** Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473; Civil Space Employee Testing Act of 1991, 105 Stat. 1616, 42 U.S.C. 2473c; Executive Order 12564, September 15, 1986; and the Privacy Act of 1974, 5 U.S.C. 552a.

## Subpart A—Drug Testing: General Provisions

### § 1272.100 Applicability.

This part applies, through regulations issued by the National Aeronautics and Space Administration (NASA), the Agency, to conduct split sample collections and preemployment testing for drugs of NASA employees.

### § 1272.102 Purpose.

NASA promulgates this part in order to protect the civil space program, maintain public safety and security, and safeguard the National security. This part establishes policies, criteria, and procedures for developing and implementing programs that help maintain a workplace free of the effects of the use of illegal drugs by NASA employees performing safety, security, and National security-sensitive duties. The procedures include the use of split sample collections and testing of applicants for NASA Civil Servant positions for the presence of illegal drugs.

### § 1272.103 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Collection Site Person* means a technician or other person trained and qualified to take urine samples and to secure urine samples for later laboratory analysis.

(b) *Confirmed Positive Test* means a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample. The confirmatory test must be by the gas chromatography/mass spectrometry method.

(c) *Illegal Drug* means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, 812. The term "illegal drugs" does not apply to the use of a controlled substance in accordance with terms of a valid prescription, or other uses authorized by law.

(d) *Medical Review Officer* (MRO) means a licensed physician, approved by NASA to perform certain functions under this part. The MRO is responsible for receiving laboratory results generated by an employer's drug testing program, has knowledge of illegal drug use and other substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part, a physician from the site occupational medical department may be the MRO.

(e) *Specimen Chain of Custody Form* is a form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

(f) *Testing Designated Position* (TDP) names a position for which incumbents and applicants are subject to drug testing under this part.

### § 1272.104 Collective bargaining.

When establishing drug preemployment and split sample collection programs, the Agency will negotiate with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change or alter the requirements of this rule because NASA safety-sensitive, security, and National security requirements themselves are non-negotiable. NASA employees covered under collective bargaining agreements will not be subject to the provisions of this rule until those agreements have been modified, as necessary; provided, however, that if within 1 year after publication of this regulation, the parties have failed to reach an agreement, an impasse will be determined to have been reached and the Agency will unilaterally implement the requirements of this rule.

## Subpart B—Drug Testing: Specimen Collection Procedures

### § 1272.200 Speciment collection procedures.

The Agency shall continue the drug specimen collection procedures specified in the Department of Health and Human Services (DHHS) Mandatory Guidelines as required by the Civil Space and Employee Testing Act of 1991, and incorporate the following mandatory split sample collection procedures:

(a) The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection (i.e., 30 ml for the primary test and an additional 15 ml for the "split").

(1) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, pours into two specimen bottles.

(2) The first 30 ml of urine shall be poured into a specimen bottle to be used for the primary specimen.

(3) The remainder of the urine, of at least 15 ml, shall be poured into another specimen bottle for the split specimen.

(4) In an unusual or emergency situation in which a collection container is not available or it is not practicable to pour the urine from the collection container into two specimen bottles, the donor can use a single specimen bottle and the collection site person shall pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as primary specimen) and retain the remainder in the collection bottle (to be used as the split specimen).

(5) Both bottles shall be shipped in a single shipping container, together with the primary specimen copies and the split specimen copy of the chain of custody form, to the laboratory.

(6) If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be analyzed at the same or at the employee's expense at a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 24 hours of the employee having been notified of a verified positive test result.

(7) The laboratory is informed in writing by the Agency that the employee has requested a test of a split sample, the laboratory shall analyze the split specimen or forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the request, and the split specimen

copy of the chain of custody form with appropriate chain of custody entries.

(8) The result of the test of the split sample shall be transmitted by the analyzing laboratory to the MRO.

(9) Action required by the Agency regulations and policy as the result of a positive drug test (e.g., removal from performing functions of a test designated position) will not be stayed pending the result of the test of the split sample.

(10) If the result of the test of the split sample fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the reasons for the cancellation to the Agency designated representative.

(b) Upon receiving the specimen from the individual, the collection site person shall determine if it has at least 30 ml of urine for the primary or single specimen bottle and, for the split sample, and additional, measurable amount of at least 15 ml of urine that can be poured into the split specimen bottle. If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluid and, after a period of up to 2 hours, again attempt to provide a complete sample using a fresh collection container. If the required amount is provided, the original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the collection site person shall notify the Agency designated representative, who shall instruct the individual to seek a medical evaluation to document his/her inability to provide the required specimen amount due to a medical condition. The evaluation shall be done by a physician acceptable to the Agency, in order to help maintain the integrity of the process (i.e., to help prevent a situation in which the employee selects a physician who could reasonably be viewed as being biased in favor of the employee). The provision is not intended to allow the Agency to arbitrarily veto the use of a physician other than one preferred by the Agency. Any medical documentation received by the employee for his or her case shall be submitted to the MRO for a determination concerning whether the inability to provide a specimen is genuine or constitutes a refusal to test. (In preemployment testing, if the Agency does not wish to hire the individual, the Agency is not required to instruct the individual to seek medical documentation.) The MRO determination shall be reported to the Agency designated representative in writing.

**§ 1272.201 Laboratory personnel and analysis procedures.**

Laboratory personnel and analysis procedures shall be in accordance with the DHHS Mandatory Guidelines and incorporate the following split sample procedures:

(a) For split sample collection method, the laboratory shall log in the split sample, with the split specimen bottle seal remaining intact. The laboratory shall store this sample securely (as stated in the DHHS Mandatory Guidelines). If the result of the test of the primary sample is negative, the laboratory may discard the split sample. If the result of the test of the primary sample is positive, the laboratory shall retain the split sample in long-term storage for 1 year following storage requirements stated in the DHHS Mandatory Guidelines. Following the end of the 1-year period, or if informed in writing by the Agency that the employee has not requested a test of the split sample, the laboratory may discard the split sample.

(b) When directed in writing by the Agency to analyze the split sample or to forward the split sample to another DHHS-certified laboratory analysis, the laboratory analyzing the split specimen shall perform gas chromatography/mass spectrometry (GCMS) as stated in the DHHS Mandatory Guidelines to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GCMS confirmation shall be conducted without regard to the cutoff levels as stated in the DHHS Mandatory Guidelines. The split sample shall be retained in the long-term storage for 1 year by the laboratory conducting the analysis of the split sample (or longer if requested by the Agency).

**§ 1272.202 Reporting and review of results.**

For the split sample method of collection, if the employee requests an analysis of the split sample within 24 hours of having been informed of a verified positive test (or longer period, if agreed to by the Agency), the Agency shall direct, in writing, the laboratory to have the split sample analyzed. Such analysis may take place at the laboratory or upon the employee's request and expense, to another DHHS-approved laboratory. If the analysis of the split sample fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split sample is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the reason for the cancellation to the Agency designated representative.

(a) The employee is not authorized to request a reanalysis of the primary sample. The laboratory may only conduct or forward the split sample for analysis upon the Agency's written request.

(b) The MRO shall review, discuss with the employee, and report all split sample positive test results in accordance with the DHHS Mandatory Guidelines for positive test results.

**§ 1272.203 Protection of employee records.**

(a) Confirmed split sample test results shall be provided to the MRO who will forward the result to Agency Officials with a need to know. Any other disclosure may be made only with the written consent of the individual.

(b) The Agency shall maintain the maximum confidentiality of records related to drug testing, which includes split sample collection results and records, to the extent required by applicable statutes and regulations.

**§ 1272.204 Use of DHHS-certified laboratories.**

All drug testing, including split sample analysis, conducted by the Agency shall only be performed by laboratories certified by DHHS.

## Subpart C—Drug Testing: Preemployment Testing Procedures

**§ 1272.300 Preemployment drug testing.**

An applicant for a testing designated position may be tested for the use of illegal drugs before final selection for employment or assignment to such a position.

**§ 1272.301 Identification of testing designated positions for preemployment.**

The testing designated positions (TDP's) subject to random drug testing are those which the Agency has determined are safety-sensitive, security, and National security positions. Agency determinations of TDP's are final.

**§ 1272.302 Drugs for which preemployment testing is performed.**

Where preemployment drug testing is performed under this part, at a minimum, the Agency is required to test for the use of marijuana and cocaine. The Agency also has the authority to test for the following drugs: opiates; phencyclidine; and amphetamines.

**§ 1272.303 Specimen collection, handling, and laboratory analysis for preemployment drug testing.**

(a) Procedures for providing urine specimens shall ensure individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. The Agency shall utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with the HHS Mandatory Guidelines. The Agency shall ensure that only testing laboratories certified by the Department of Health and Human Services, under subpart C of the HHS Mandatory Guidelines, are utilized.

(b)(1) If the individual refuses to cooperate with the urine collection (e.g., refusal to provide a specimen, or to complete paperwork), then the collection site person shall inform the Agency designated representative and shall document the non-cooperation on the specimen chain of custody form. The Agency designated representative shall report the failure to cooperate to the appropriate management authority. Individuals so failing to cooperate shall be treated in all respects as if they had been tested and had been determined to have used an illegal drug. The Agency may apply any sanctions consistent with its disciplinary policy.

(2) The collection site person shall ascertain that there is a sufficient amount of urine for all testing called for under these procedures. Split sample procedures are required by the Civil Space Employee Testing Act of 1991 and covered under Part 1272, Subpart IIA. Under these proposed split sample procedures, the primary sample, therefore, would be 30 ml, with an additional 15 ml collected for the "split." The minimum sample volume, which the collection site person would ask the applicant to provide, would be a total of 45 ml for the split sample procedure. The applicant may be given reasonable amounts of liquid and a reasonable amount of time in which to provide the specimen required. The applicant and the collection site person must keep the specimen in view at all times. In the event that the individual fails to provide a sufficient amount of urine, the amount collected will be noted on the chain of custody form. In this case, the collection site person will telephone the Agency's designated representative who will determine the next appropriate action. This may include deciding to reschedule the individual for testing, to consider the testing attempt as refusal to cooperate, or both.

**§ 1272.304 Medical review of results of preemployment tests for illegal drug use.**

(a) All preemployment illegal drug test results shall be submitted for medical review by the Medical Review Officer (MRO). A confirmed positive test for drugs shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another testperformed by the gas chromatography/mass spectrometry method (GC/MS). This procedure is described in paragraphs 2.4 (e) and (f) of the HHS Mandatory Guidelines.

(b) The MRO will consider the medical history of the applicant, as well as any other relevant biomedical information. When there is a confirmed positive test result, the applicant will be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication. If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, consistent with legal and non-abusive drug use, the MRO will certify that the test results do not meet the conditions for a determination of use of illegal drugs. If no such certification can be made, the MRO will make a determination of use of illegal drugs. Determinations of use of illegal drugs will be made in accordance with the criteria provided in the Medical Review Officer Manual issued by the DHHS (Publication No. (ADM) 88–1528).

**§ 1272.305 Action pursuant to a determination of illegal drug use.**

(a) When an applicant for employment has a been tested and determined to have tested positive for the presence of an illegal drug processing for employment will be terminated and the applicant will be so notified.

(b) An applicant who has been notified of a positive drug test result may request a confirmation test of the split sample at the same or another DHHS certified laboratory. The Agency designated representative will inform applicants of their right to request a retest under the provisions of this section.

**§ 1272.306 Records.**

(a) Confirmed preemployment positive test results shall be provided to the Medical Review Officer and only those Agency officials with a need to know. Any other disclosure may be made only with the written consent of the individual.

(b) The Agency shall maintain maximum confidentiality of records related to preemployment testing to the extent required by applicable statutes and regulations (including, but not limited to, 42 U.S.C. 290dd–3, 42 U.S.C. 290ee–3, and 42 CFR part 2). If such records are sought from the Agency for criminal investigations, any applicable procedures in statute or regulation for disclosure of such information shall be followed.

(c) Unless otherwise approved by the Agency, all records relating to positive preemployment drug test results, shall be retained in such a manner as to allow retrieval of all information pertaining to the individual results for a minimum period of 5 years after completion of testing of any given specimen, or longer if so instructed by NASA. In addition, a frozen sample of all positive preemployment urine specimens shall be retained by the laboratory for at least 6 months, or longer if so instructed by the Agency.

(d) The Agency shall maintain as part of its medical records copies of specimen chain of custody forms.

(e) The specimen chain of custody form will contain the following information:

(1) Date of collection;

(2) Tested person's name;

(3) Tested employee/applicant's social security number of other identification number unique to the individual;

(4) Specimen number;

(5) Type of test (applicant);

(6) Temperature range of specimen (urine drug testing);

(7) Remarks regarding unusual behavior or conditions;

(8) Collector's/BAT's signature; and

(9) Certification signature of specimen provider certifying that specimen identified is in fact the specimen the individual provided.

## Subpart D—Alcohol Testing: General Provisions

**§ 1272.400 Applicability.**

This part applies, through regulations issued by the National Aeronautics and Space Administration (NASA), the Agency, to conduct an alcohol testing program for NASA employees.

**§ 1272.401 Purpose.**

This part establishes policies, criteria, and procedures for developing and implementing programs that help to maintain a workplace free of the effects of the misuse or abuse of alcohol by NASA employees performing safety, security, and National security-sensitive

duties. The procedures include the detection of alcohol present at a predetermined level by current or prospective NASA employees in or applying for testing designated positions.

**§ 1273.402 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) *Air blank.* A reading by an evidential breath testing device of ambient air containing no alcohol.

(b) *Alcohol.* Ethyl alcohol (ethanol). References to the use of alcohol include use of any beverage, mixture, or preparation containing ethyl alcohol (including any medication).

(c) *Alcohol concentration.* The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part. When the indicated alcohol concentration of a covered employee on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.

(d) *Alcohol testing site.* The location designated by the Agency at which employees are required to provide breath in order to be tested for the presence of alcohol.

(e) *Breath Alcohol Technician (BAT).* An individual who instructs and assists individuals in the testing process and operates the evidential breath testing device.

(f)*Confirmed Positive Test.* A breath test result of 0.04 or greater alcohol concentration, performed on an evidential breath testing device and repeated on the same or another breath testing device with a breath test result of 0.04 or greater alcohol concentration. A confirmed 0.04 or greater alcohol concentration is the Agency's predetermined level of alcohol presence.

(g) *Confirmatory test.* An analysis of a second, separate amount of breath on an evidential breath testing device.

(h) *Counseling.* Assistance provided by qualified professionals to employees, especially, but not limited to those employees whose job performance is, or might be, impaired as a result of misuse or abuse of alcohol; such assistance my include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and followup services to the individual after completion of treatment and return to work.

(i) *DHHS.* The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

(j) *Employee.* An individual designated in NASA regulation as subject to alcohol testing. As used in this part, "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

(k) *Employee Assistance.* A program of counseling, referral, and educational services concerning misuse or abuse of alcohol, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

(l) *Evidential breath testing device (EBT).* A breath testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "confirming products lists of evidential measurement devices."

(m) *Initial test.* The first analysis of an amount of breath on an evidential breath testing device.

(n) *Invalid test.* A test which has been declared invalid. The Agency will not consider such a test as either a positive nor a negative test.

(o) *Random testing.* The unscheduled, unannounced alcohol breath testing of individuals performing safety-sensitive, security, or National security functions by a process designed to ensure that selections are made in a nondiscriminatory manner.

(p) *Reasonable suspicion.* Suspicion based on an articulable belief that an employee misuses and abuses of alcohol drawn from particularized facts and reasonable inferences from those facts as detailed further in section 1272.504.

(q) *Referral.* The direction of an individual toward an employee assistance program professional, for assistance with prevention treatment, or rehabilitation from misuse or abuse of alcohol, or other problems. Referrals to an employee assistance program can be made by the individual [self-referral], or by supervisors or managers.

(r) *Rehabilitation.* A formal treatment process aimed to the resolution of behavioral-medical problems, including alcohol misuse or abuse, and resulting in such resolution.

(s) *Testing designated position.* A position whose incumbents are subject to alcohol testing under § 1272.501.

**§ 1272.403 Collective bargaining.**

When establishing the alcohol testing program, the Agency will negotiated with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change or alter the requirements of this rule because NASA safety-sensitive, security, and National security requirements themselves are non-negotiable. NASA employees covered under collective bargaining agreements will not be subject to the provisions of this rule until those agreements have been modified, as necessary; provided, however, that if within 1 year after publication of this regulation, the parties have failed to reach agreement, an impasse will be determined to have been reached and the Agency will unilaterally implement the requirements of this rule.

## Subpart E—Alcohol Testing; Procedures

**§ 1272.500 Employee assistance, education, and training.**

The Agency shall include the following or appropriate alternatives:

(a) Employee assistance programs emphasizing preventive services, education, short-term counseling, coordination and referral to outside agencies, and followup. These services shall be available to all NASA employee involved in performing duties of testing designated positions. The Agency has no obligation to pay the costs of any individual's counseling, treatment, or rehabilitation beyond those services provided by the employee assistance program, except as provided for in the Agency's benefits programs.

(b) Education and training programs for Agency employees on a periodic basis, which will include, at a minimum, the following subjects:

(1) For all NASA employees: Health aspects of alcohol misuse and abuse; safety-sensitive, security, National security and other workplace-related problems caused by alcohol misuse and abuse; the provisions of this rule; the agency's policy; and available employee assistance services.

(2) For managers and supervisors:

(i) Recognition of deteriorating job performance or judgment, or observation of unusual conduct which may be the result of possible misuses or abuse of alcohol;

(ii) Responsibility to intervene when there is deterioration in performance, or observed unusual conduct, and to offer alternative courses of action that can assist the employee in returning to satisfactory performance, judgment, or conduct, including seeking help from the employee assistance program; .

(iii) Appropriate handling and referral of employees with possible alcohol misuse and abuse problems; and

(iv) Employer policies and practices for giving maximum consideration to

the privacy interests of employees and applicants.

**§ 1272.501 Random alcohol testing and identification of testing designated positions.**

(a)(1) The Agency will conduct random testing for presence of alcohol at the predetermined level for employees in testing designated positions identified in this section.

(2) The program developed under this part for positions identified in paragraph (b) of this section shall provide for random tests at a rate determined to management's need (i.e., generally equal to 10 percent of the total number of employees in testing designated positions for each 12-month period.)

(b) Positions subject to random drug and alcohol testing are safety-sensitive, security, and National security positions, which have been designated as TDP's.

**§ 1272.502 Applicant alcohol testing.**

An applicant for a testing designated position may be tested for the presence of alcohol at the predetermined level before final selection for employment or assignment to such a position.

**§ 127.503 Alcohol testing as a result of an accident.**

When there is an accident which is required to be reported to the Agency under applicable NASA instructions, rules, and regulations, it may be necessary to test individuals in testing designated positions, for the presence of alcohol at the predetermined level, if such individuals could have caused or contributed to the conditions which caused the accident. For an accident requiring immediate notification or reporting as required by applicable NASA instructions, rules, and regulations, the testing will be required as soon as possible after the accident but within 6 hours of the accident, unless NASA determines that it is not feasible to do so.

**§ 127.504 Alcohol testing for reasonable suspicion.**

(a)(1) It may be necessary to test any employee in a testing designated position, for the presence of alcohol at the predetermined level, if the behavior of the individual creates the basis for reasonable suspicion of the use of alcohol in violation of applicable law or Federal regulation. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, or is a physician from the site occupational medical department, must agree that there is a reasonable suspicion of alcohol use.

(2) A supervisory or management official has reasonable suspicion that the employee is currently under the influence of or impaired by alcohol, or alcohol in combination with a controlled substance, based upon specific, personal observations that the supervisory or management official can articulate concerning the appearance, behavior, speech, or body odors of the employee.

(b) The fact that an employee had a confirmed positive test for the presence of alcohol at the predetermined level, at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

(c) The requirements of this part relating to alcohol testing are not intended to prohibit the Agency from pursuing other existing disciplinary procedures of any employee exhibiting aberrant or unusual behavior.

**§ 1272.505 Breath alcohol technician.**

(a) The breath alcohol technician (BAT) shall be trained to proficiency in the operation of the evidential breath testing device (EBT) he or she is using and in the alcohol testing procedures of this part.

(1) Proficiency shall be demonstrated by successful completion of a course of instruction, which at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath specimen, and interpreting and recording EBT results.

(2) Courses of instruction that meet standards of the National Highway Traffic Safety Administration (NHTSA) model course or a course approved by a state department of health or other relevant state agency may be used to demonstrate BAT proficiency.

(3) The course of instruction shall include documentation that the BAT has demonstrated competence in the operation of the specific EBT he/she will use.

(4) Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT.

(5) The BAT shall received additional training, as needed to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.

(6) The Agency shall ensure that documentation of the training and proficiency test of each BAT it uses to test employees is maintained, as provided in § 1272.516 of this part.

(b) The supervisor of an employee shall not act as a BAT for that employee, unless no other BAT is available in a timely manner to perform the test.

**§ 1272.506 Devices to be used in alcohol testing.**

(a) The Agency shall use only EBT's meeting the requirements of this section for alcohol testing subject to this part.

(b) EBT's shall have the capability of providing, independently or directly linked to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test and of the operations specified in paragraphs (c) and (d) of this section.

(c) EBT's shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and being printed out on each copy of the result.

(d) EBT's shall be able to distinguish alcohol from acetone at the 0.04 alcohol concentration level.

(e) EBT's shall be capable of the following operations prior to and following each collection of breath:

(1) Testing an air blank.

(2) Performing an external calibration check.

(f) In order to be used in alcohol testing subject to this part, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer.

(1) The plan shall designate the method or methods to be used to perform external calibration checks of the device.

(2) The plan shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions (e.g., temperature, altitude, humidity), and contexts of operation (e.g., stationary or mobile use).

(3) The plan shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration.

(4) The plan shall specify inspection, maintenance, and calibration requirements and intervals for the device.

(5) For a plan to be regarded as valid for purposes of this paragraph, the manufacturer shall have submitted the plan to the National Highway Traffic

Safety Administration (NHTSA) for review by NHTSA and have received NHTSA approval of the plan.

(g) The Agency shall comply with the NHTSA-approved quality assurance plan for each EBT it uses for alcohol testing subject to this part.

(1) The Agency shall ensure that external calibration checks of each EBT are performed as provided in the manufacturer's plan.

(2) The Agency shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in manufacturer's plan. The EBT shall not again be used for alcohol testing under this Plan until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.

(3) The Agency shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the devices manufacturer or a state health agency or other appropriate state agency. The Agency shall also ensure that each BAT or other individual who performs an external calibration check of an EBT used for alcohol testing subject to this part has demonstrated proficiency in conducting such a check of the model of EBT in question.

(4) The Agency shall ensure that the records of the external calibration checks of EBT's are maintained as provided in § 1272.516 of this part.

(h) When the EBT is not being used at an alcohol testing site, it shall be stored in a secured space.

**§ 1272.507 The alcohol testing site.**

(a) The Agency shall use an alcohol testing site that affords visual and aural privacy to the individual being tested. All necessary equipment, personnel, and materials for breath testing shall be provided at each site.

(b) The Agency may use a mobile collection facility (e.g., a van equipped for alcohol testing) as an alcohol testing site.

(c) The alcohol testing site shall be secured, and no unauthorized persons shall be permitted access to the alcohol testing site, at any time when testing is occurring or when the EBT remains unsecured within the alcohol testing site.

(d) In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a place other than an alcohol testing site. In such case, the Agency or BAT shall provide visual and aural privacy to the employee to the greatest extent practicable.

(e) The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing site while the preparations for testing and testing of a given employe (as set forth in § 1272.509, § 1272.510 and § 1272.511) are in progress.

**§ 1272.508 The Alcohol testing form.**

(a) The Agency shall use a collection form generated by the EBT if it provides all the following information on the form: date and time, sequential test number, employee name and identifying data, BAT name and identifying data, certification statements about the test with signature space by the employee and the BAT, remarks section, and breath test result. If the EBT does not produce all of this required information, an Agency approved alcohol test form with this required information shall be used.

(b) If the EBT does not print the results directly onto the form, the BAT shall affix the test result printout to the Agency alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(c) The form shall have triplicate copies: one for the employee being tested, one for the BAT, and one for the Agency.

**§ 1272.509 Preparation for testing.**

(a) When the employee enters the alcohol testing site, the BAT will require him or her to provide positive identification (e.g., through use of a photo I.D. card or identification by an Agency representatives). On request by the employee, the BAT shall provide postive identification to the employee.

(b) The BAT shall explain the testing procedure to the employee.

(c) The employee and BAT shall complete and date the alcohol testing form. Both the BAT and the employee shall sign the form, signifying that the employee is present and is providing breath and noting the number of the test that is about to be taken.

(d) Refusal by an employee to complete and sign the alcohol testing form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the collection process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The collection process shall be terminated and the BAT shall immediately notify the Agency of the termination.

(e) If an initial or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new initial or conformation test, as applicable, using a new alcohol testing form with a new sequential test number.

**§ 1272.510 Administration of the initial test.**

(a) Before the initial test is administered to each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the EBT reading is greater than 0.00, the BAT shall conduct one more air blank. If the EBT does not register 0.00 on that attempt, testing shall not proceed using that instrument. However, testing of the employee may continue using another EBT.

(b) An individually-sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.

(c) The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

(d) After the initial test is administered for each employee, the BAT shall run an air blank, after allowing adequate time for the EBT to clear any residual alcohol remaining from the test. If the EBT reading is greater than 0.00, the BAT shall conduct one more air blank. The employee's test is valid only if this check results in a 0.00 reading.

(e) Any EBT taken out of service because of failure to perform air blanks accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

(f) If the result of the initial test is an alcohol concentration of less than 0.04, no further testing is authorized. The BAT shall transmit the result to the employer in a confidential manner, and the Agency shall receive and store the information so as to ensure that confidentiality is maintained as required by § 1272.515 of this part.

(g) If the result of the initial test is an alcohol concentration of 0.04 or greater, a confirmatory test shall be performed as provided in § 1272.514 of this part.

(h) If the EBT does not print the results directly onto the form, the BAT shall affix the test result printout to the alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(i) In the event the result displayed on the EBT does not match the printed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with § 1272.513 of this part, the test is invalid and the Agency and employee shall be so advised.

**§ 1272.511 Administration of the confirmatory test.**

(a) The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmatory test. This time period begins with the completion of the initial test, and shall not be less than 15 minutes nor more than 20 minutes long. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol from leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction, the BAT shall so note in the "Remarks" section of the form.

(b) The BAT shall provide to the employee, and instruct the employee to read during the waiting period, a notice which shall inform the employee that should the confirmatory test result be an alcohol concentration of 0.04 or greater, the employee shall not perform any safety, security, or National security-sensitive function. The employee shall initial the testing form in the space provided to indicate that this notice has been provided. If the employee declines to initial the form for this purpose, the BAT shall note the provision of the notice and the employee's refusal to initial in the "Remarks" section of the form.

(c) The procedures of § 1272.510(a), (c), (d), (e), and (i) shall be followed. A new mouthpiece shall be used for the confirmation test.

(d) In the event that the initial and confirmatory results are not identical, the lower of the two results is deemed to be the final result upon which any Agency action shall be based.

(e) If the EBT does not print the result directly onto the form, the BAT shall affix the test result printout to the alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(f) The BAT shall transmit all results to the Agency in a confidential manner.

(1) The Agency shall designate a representative(s) at each Installation for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BAT's to the Agency concerning the alcohol testing results of employees shall be to the designated Agency representative(s).

(2) Such transmission may be in writing, in person or by telephone or electronic means, but the BAT shall ensure immediate transmission to the Agency of results that require the Agency to prevent the employee from performing safety, security, or National security-sensitive functions.

(3) If the initial transmission is not in writing (e.g., by telephone), the Agency shall establish a mechanism to verify the identity of the BAT providing the information.

(4) If the initial transmission is not in writing, the BAT shall follow the initial transmission by providing to the Agency its copy of the alcohol testing form. The Agency shall store the information so as to ensure that confidentiality is maintained as required by § 1272.515 of this part.

**§ 1272.512 Inability to provide an adequate amount of breath.**

(a) This section sets forth procedures to be followed in any case in which an employee is unable because of a medical condition, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test.

(b) If a donor provides an insufficient amount of breath, and claims that he or she is unable to provide more breath, the BAT shall instruct the employee to attempt to provide an adequate amount of breath a second time. If the employee refuses to make the attempt, the BAT shall immediately inform the Agency.

(c) If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the alcohol testing form and immediately inform the Agency designated representative.

(d) The Agency shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the Agency concerning the employee's medical ability to provide an adequate amount of breath. The employee shall make available to the physician all relevant medical history and records.

(e) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take the test. The physician shall provide to the Agency a written statement of the basis for his or her conclusion. The employee must agree to permit the Agency to have access to medical records that the employee claims substantiates the claims of a medical condition.

(f) If the licensed physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (e) of this section, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion or inability to reach a conclusion to the Agency.

**§ 1272.513 Invalid tests.**

An alcohol test shall be invalid under the following circumstances:

(a) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the manufacturer's quality assurance plan from the known value of the test standard. In this event, every test performed on the device since the last valid external calibration check shall be considered invalid;

(b) A device other than an EBT as described in § 1272.507 is used for the test;

(c) The BAT does not observe the minimum 15 minutes waiting period

prior to the confirmatory test, as provided in section 1272.511(a);

(d) The BAT does not perform an air blank of the EBT before and after an initial or confirmatory test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test, as provided in § 1272.511 and § 1272.512;

(e) The BAT does not sign the form as required by § 1272.510 and § 1272.511;

(f) The employee has failed to sign the form following the printing on or attachment to the form of the test result, and the BAT has failed to note this event on the remarks section of the form;

(g) The EBT fails to print the result;

(h) The sequential test number on the EBT is not the same as the sequential test number on the printed result; or

(i) The alcohol concentration displayed on the EBT is inconsistent with the alcohol concentration printed on the results.

(j) The Agency will not take any action, or make any adverse determinations based on an invalid test.

**§ 1272.514 Action pursuant to a determination of alcohol at the predetermined level.**

(a) When an applicant for employment has been tested and determined to have alcohol present at the predetermined level, processing for employment will be terminated and the applicant will be so notified.

(b)(1) When an employee who is in a testing designated position has been tested and determined to have alcohol present at the predetermined level, the Agency shall immediately remove that employee from the testing designated position. If this is the first determination of alcohol present at the predetermined level by that employee, the employee may be offered a reasonable opportunity for rehabilitation, consistent with the Agency's policies. If rehabilitation is offered, the employee will be placed in a non-testing designated position provided there is such an acceptable position in which the individual can be placed during rehabilitation; if there is no acceptable non-testing designated position, the employee will be placed on sick, annual, or other leave status, for a reasonable period sufficient to permit rehabilitation. However, the employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result for alcohol misuse or abuse.

(2) Following a determination by the Agency designated representative, in consultation with the Employee Assistance Program, after counseling or rehabilitation, that the employee can safely return to duty, the Agency may offer the employee reinstatement, in the same or a comparable position to the one held prior to the removal. Failure to take the opportunity for rehabilitation if it has been made available will require a significant disciplinary action up to and including removal from NASA employment, in accordance with the Federal policies.

(c) An employee who has been removed from a testing designated position because of substance abuse may not be returned to such position until that employee has:

(1) Successfully completed counseling or a program of rehabilitation; and

(2) Undergone an alcohol breath test with a negative result;

(d) After an employee determined to have misused or abused alcohol, has been returned to duty, the employee shall be subject to unannounced alcohol testing, at intervals, for a period of 12 months.

**§ 1272.515 Availability and disclosure of alcohol testing information about individual employees.**

(a) Alcohol testing records shall only be disclosed without prior written authorization from the employee who was tested to those Agency officials with a need to know.

(b) Except as provided in this section, the Agency shall release information or copies of records regarding an employee's alcohol test results to a third party only as directed by specific, written instruction of the employee who was tested. The written authorization shall state that the Agency may release the information or records to an identified person.

(c) The Agency shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(d) The Agency may disclose information related to an alcohol test of an individual to the individual, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, or by the Agency against the individual, and arising from a positive alcohol test (including but not limited to a worker's compensation, unemployment, compensation, equitable relief or monetary damages, or other proceeding relating to a benefit sought by the employee.

**§ 1272.516 Maintenance and disclosure of records concerning EBT's and BAT's.**

(a) The Agency shall ensure that the following records are maintained for 5 years:

(1) Records of the inspection, maintenance, and calibration of each EBT used in employee testing.

(2) Documentation of the compliance with the QAP of the manufacture or each EBT the Agency uses a alcohol testing under this part, including records of the result of external calibration checks.

(3) Records of the training and proficiency testing of each BAT used in employee testing.

(b) Records required to be maintained by this section shall be disclosed as follows: The Agency may disclose records covered by this section to the individual, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, or by the Agency against the individual, and arising from a positive alcohol test (including but not limited to a worker's compensation, unemployment compensation, equitable relief or monetary damages, or other proceeding relating to a benefit sought by the employee).

Dated: June 9, 1993.

**Daniel S. Goldin,**

*Administrator.*

[FR Doc. 93–15253 Filed 7–2–93; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 35

**[Docket No. RM93–18–000]**

## Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992; Notice of Proposed Rulemaking

June 23, 1993.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is proposing revisions to its regulations concerning the ratemaking treatment to be used by public utilities to recover in jurisdictional rates the costs incurred in paying special assessments levied under the Atomic Energy Act of 1954, as amended by Title XI of the Energy Policy Act of 1992. The Commission's proposed ratemaking treatment will permit utilities to recover the costs for special assessments on a monthly basis. In a document published elsewhere in

this edition of the **Federal Register**, the Commission is also providing accounting guidance to be used by public utilities to account for the special assessments.

**DATES:** Written comments must be received by the Commission by August 5, 1993.

**ADDRESSES:** Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

James H. Douglass, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–2143 (Legal Issues).

James K. Guest, Office of the Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, Telephone: (202) 219–2602, (Accounting Issues).

Lawrence R. Anderson, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0575 (Ratemaking Issues).

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

## I. Introduction

Title XI of the Energy Policy Act[1] amends the Atomic Energy Act of 1954[2] to, among other things, create a fund to be used for the decommissioning and decontamination of the Department of Energy's (DOE) gaseous diffusion uranium enrichment facilities. This new fund will be financed in part through special assessments which DOE is required to collect from certain domestic utilities pursuant to the Atomic Energy Act of 1954, as amended (Atomic Energy Act). Utilities will have no discretion concerning the payment of special assessments.

The Secretary of the DOE will issue special assessments in the near future. Consequently, the Federal Energy Regulatory Commission (Commission) believes that it is necessary to provide guidance as soon as practicable to utilities concerning the accounting treatment to be used for costs incurred for special assessments prior to the collection of the assessment by the Secretary of the DOE.[3] In addition, the Commission believes it is important to provide guidance as well as to the ratemaking treatment for special assessments. Accordingly, the Commission is now proposing to amend part 35 of title 18, chapter I of the Code of Federal Regulations to provide a method for public utilities to recover through jurisdictional rates the costs for special assessments levied under the Atomic Energy Act.

The Commission is also specifying, in the separately-published document, the method that public utilities should use to account for special assessments pursuant to the Commission's Uniform Systems of Accounts (USofA).[4]

## II. Public Reporting Burden

The proposed rule would establish how public utilities may recover the costs of special assessments through jurisdictional rates. In the separately-published document, the Commission is also providing guidance concerning how public utilities should account for special assessments through the USofA.

The accounting guidance and proposed rule, if adopted, would add and clarify certain reporting requirements. The public reporting burden for the information collection requirements contained in this rule are estimated to average 2 hours per response. This information will be collected on an annual basis. The number of respondents is estimated to be 70. The respondents are public utilities who may seek to recover the costs incurred for special assessments and may seek to make minor revisions to rate calculations. To the extent that rate calculations are computerized, a one-time programming change, estimated at 50 hours per respondent, would be necessary. Thus, the ratemaking impact is estimated to be no more than a one-time effort of 3050 hours. These estimates include time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

## III. Discussion

### *A. The Uranium Enrichment Decontamination and Decommissioning Fund*

Section 1801(a) of the Atomic Energy Act provides for the establishment of the Uranium Enrichment Decontamination and Decommissioning Fund (Fund). The Fund will be used to pay for decontamination, decommissioning, reclamation and other remedial activities at the DOE's gaseous diffusion uranium enrichment facilities. Section 1802(a) provides that the Fund will be financed through deposits in the amount of $480 million per fiscal year (adjusted annually for inflation).

Section 1802(c) provides that the annual deposit to the Fund will be financed partly through the collection by the DOE of a special assessment on domestic utilities. The special assessment will be based on the separative work units (a separative work unit is a measurement of energy and is the unit by which uranium enrichment services are sold) purchased by domestic utilities for the purpose of

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[1] See Pub. L. No. 102–486, Title XI, 106 Stat. 2776, 2954 (1992).

[2] 42 U.S.C. 2011 *et seq.*

[3] This guidance is in a separate document published elsewhere in this edition of the **Federal Register**.

[4] 18 CFR part 101.

commercial electricity generation prior to October 24, 1992.

Section 1802(c) provides that the amount collected through special assessments by the DOE will not exceed $150 million per fiscal year (adjusted annually for inflation). Section 1802(d) provides that the collection of special assessments will cease at the earlier of October 24, 2007, or when $2.25 billion (adjusted annually for inflation) has been collected.

Section 1802(g) provides that special assessments shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as utility's other fuel cost.

*B. Accounting Treatment*

The accounting guidance is in a separate document published elsewhere in this edition of the **Federal Register**.

*C. Ratemaking Treatment*

According to the Commission's ratemaking policy, public utilities are permitted an opportunity to recover all of the fuel expense prudently incurred in providing jurisdictional service under the Federal Power Act (FPA). As noted earlier, section 1802(g) of the Atomic Energy Act provides that special assessments are a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in the same manner as a utility's other fuel cost. Therefore, the Commission finds that special assessments are costs that are generally recoverable cost through jurisdictional rates.[5]

For various reasons, the costs relating to the special assessments charged to Account No. 518, Nuclear Fuel Expense, may not be equal to the amount which the utility actually pays to DOE in a particular year. The Commission's fuel adjustment clause regulation[6] is designed to permit utilities to recover their actual fuel costs. The Commission believes in this instance that the amount eligible for wholesale rate recovery in a particular year should be the actual amount paid to DOE, not the amount charged to Account No. 518 during such period.

Therefore, the Commission believes it is appropriate to prescribe specific procedures to be used by public utilities in reflecting the special assessments in wholesale rates. To this end, the Commission is proposing to amend Part 35 of its regulations to add a new section 35.28 to prescribe the ratemaking treatment for special assessments to be used by public utilities. The Commission's proposed ratemaking treatment will permit utilities to recover the costs for special assessments on a monthly basis. The Commission's proposed regulations will require utilities seeking to recover the costs for special assessments to calculate their monthly net costs by: (1) Deducting any expenses associated with special assessments included in Account No. 518; (2) adding one-twelfth of any payments made for special assessments within the 12-month period ending with the current month; and (3) deducting one-twelfth of any refunds of payments made for special assessments received within the 12-month period ending with the current month that is received from the federal government because a public utility has contested a special assessment or overpaid a special assessment.

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[7] requires that rulemakings contain either a description and analysis of the affect the proposed rule will have on small entities or to certify that the rule will not have a substantial economic effect on a substantial number of small entities. Because most of the entities that would be required to comply with the proposed rule are large public utilities that do not fall within the RFA's definition of small entities,[8] the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

## V. Environmental Statement

Commission regulations require the preparation of an environmental assessment or an environmental impact statement for any Commission action that may have a significant effect on the human environment.[9] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[10] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural or that does not substantively change the effect of legislation or regulations being amended.[11] Because the proposed rule is merely clarifying and procedural, no environmental consideration is necessary.

## VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[12] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in the proposed rule are contained in FERC–516, "Electric Rate Filings" (OMB approval No. 1902–0096), FERC Form No. 1, "Annual Report of Major public utilities, licensees and others" (OMB approval No. 1902–0021); and FERC Form No. 1–F, "Annual Report of Nonmajor public utilities and licensees" (OMB approval No. 1902–0029).

The Commission uses the data collected in these information collections to carry out its responsibilities under the FPA and the Energy Policy Act. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings. The Commission's Office of the Chief Accountant uses the data to carry out its audit programs and continuous review of the financial conditions of regulated companies.

The Commission believes that the accounting guidance and proposed rule will assist regulated companies in accounting for and recovering in jurisdictional rates the costs incurred for special assessments, without significantly increasing the reporting burden for public utilities.

The Commission is submitting notification of the proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of the proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

## VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no

[5] However, while the special assessments are generally recoverable in jurisdictional rates, some public utilities may be operating under rate moratoria or rate settlement terms and conditions that would prohibit recovery of special assessments in rates for certain periods.

[6] 18 CFR 35.14.

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[9] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes & Regulations ¶30,783 (1987).

[10] 18 CFR 380.4.

[11] 18 CFR 380.4(a)(2)(ii).

[12] 5 CFR 1320.12.

later than August 5, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–18–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

**List of Subjects in 18 CFR Part 35**

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18 of the Code of Federal Regulations, as set forth below.

By direction of the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended to add new section 35.28 to read as follows:

**§ 35.28 Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as amended by Title XI of the Energy Policy Act of 1992.**

The costs that public utilities incur relating to special assessments under the Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992, are costs that may be reflected in jurisdictional rates. Public utilities seeking to recover the costs incurred relating to special assessment shall comply with the following procedures.

(a) *Fuel Adjustment Clauses.* In computing the cost of nuclear fuel pursuant to section 35.14(a)(6), utilities seeking to recover the costs for special assessments through their fuel adjustment clauses shall:

(1) Deduct any expenses associated with special assessments included in Account No. 518;

(2) Add one-twelfth of any payments made for special assessments within the 12-month period ending with the current month; and

(3) Deduct one-twelfth of any refunds of payments made for special assessments received within the 12-month period ending with the current month that is received from the federal government because the public utility has contested a special assessment or overpaid a special assessment.

(b) *Cost of Service Data Requirements.* Public utilities filing rate applications under section 35.12 or 35.13 (regardless of whether the utility elects the abbreviated, unadjusted Period I, adjusted Period I, or Period II cost support requirements) must submit cost data that is computed in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

(c) *Formula Rates.* Public utilities with formula rates on file that provide for the automatic recovery of nuclear fuel costs must reflect the costs for special assessments in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

[FR Doc. 93–15852 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 888

**[Docket No. N–93–3616; FR–3510–N–02]**

### Section 8 Housing Assistance Payments Program-Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice to extend public comment period.

**SUMMARY:** This notice advises the public that the public comment period on the proposed Fiscal Year 1994 section 8 Fair Market Rents (FMRs) is being extended until August 31, 1993.

**DATE:** Comments are due August 31, 1993.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. To expedite processing, each commenter is requested to simultaneously submit a copy of its comments to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.—5:30 p.m. Eastern Time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing (202) 708–0477 (TDD: (202) 708–0850), for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 708–3944 (TDD: (202) 708–4594), for questions relating to all other section 8 programs; for technical information regarding the development of the schedules for specific areas or the method used for calculating the FMRs, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0577 (TDD: (202) 708–0770). Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. On May 6, 1993, HUD published the proposed FY 1994 FMRs with a 60-day public comment period to July 6, 1993. These FMRs were the first to be calculated using 1990 Census data. The introduction of the Census data resulted in major changes to these estimates, including proposed decreases for many areas. The May 6 document provided a detailed explanation of the changes to FMRs that resulted from the "rebenchmarking" process. Because of the large number of requests received, HUD believes that it is in the public interest to extend the public comment period to ensure that all interested parties will have sufficient time to obtain and submit the rental housing survey data required to modify the proposed FMRs.

HUD will publish final FY 1994 FMRs in two stages. (This process is effective for FY 1994 FMRs only.) The first publication will include final FMRs for all areas. For areas for which no comments were submitted and for areas for which comments were received in time to be evaluated, final FY 1994 FMRs will be made effective on October 1. For those areas with comments received too late in the extended comment period for HUD to complete its evaluation, FMRs for FY 1993 will be republished and will continue in effect.

A second publication will replace the FMRs for those areas covered by comments that had decisions pending, *i.e.*, those for whom the FY 1993 FMRs are republished and continued in effect. The second publication will occur as soon as HUD has completed its review of the comments submitted late in the process.

By extending the public comment period to August 31, 1993, HUD seeks further comments on FMR levels for specific areas. These comments must satisfy the requirements set forth in detail in section *V. Request for Comments* (page 27065) of the preamble to the May 6, 1993 **Federal Register** publication of the proposed FY 1994 FMRs. PHAs that have let contracts for Random Digit Dialing surveys, or other types of professionally-conducted surveys, are advised to notify HUD by the end of the comment period if their surveys have not been completed. HUD will allow until October 31, 1993 for receipt of RDD surveys for which contracts were let late in the comment period.

Dated: June 29, 1993.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 93–15826 Filed 7–2–93; 8:45 am]

BILLING CODE 4210–32–M

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

### 24 CFR Part 3500

**[Docket No. R–93–1256; FR–1942–N–09]**

**RIN 2502–AC09**

## Public Comment Period and Informal Public Hearing Under the Real Estate Settlement Procedures Act (RESPA), Regulation X

**ACTION:** Notice of written comment period and informal public hearing.

**SUMMARY:** On November 2, 1992, the Department of Housing and Urban Development published in the **Federal Register** a final rule ("the Rule") (57 FR 49600), with an effective date of December 2, 1992, implementing requirements of the Real Estate Settlement Procedures Act (RESPA), as amended, 12 U.S.C. 2601 *et seq.* Since publication of the Rule, the Department has received a considerable number of inquiries and comments from the public concerning provisions of the Rule. In light of these comments, the Secretary has decided to review certain provisions of the Rule. The Secretary is particularly interested in receiving comments concerning the effect that certain new exceptions and other provisions may have on the cost and quality of settlement services to consumers. In order to assure that all points of view are considered, the Secretary has decided to provide a specific period for public comments and to conduct an informal hearing under RESPA.

**DATES:** *Date for comments:* August 5, 1993.

*Date for hearing:* On August 6, 1993 the Assistant Secretary for Housing—Federal Housing Commissioner or his designee will hold an informal public hearing from 9 a.m. until completion (including any additional date established at the hearing).

**ADDRESSES:** The hearing will be held at the National Capital Regional Office of the General Services Administration (GSA) Auditorium, 7th and D Streets SW., Washington, DC 20407, or such alternate site as may be timely announced by a **Federal Register** publication. Court reporters will be provided by the Department to create a transcript of the hearing.

Comments may be sent to: William J. Reid, room 8212, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** William J. Reid (202) 708–0421. For legal questions only, contact Grant E. Mitchell, Senior Attorney (RESPA), (202) 708–1552. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The purpose of this public comment period and informal public hearing is to afford all interested members of the public an opportunity to further comment regarding provisions of the Rule allowing employer payments to employees for referrals to any company, the exemption for computerized loan origination systems, the Secretary's authority regarding state laws affecting controlled businesses as such laws affect consumers, and the adequacy of protections to consumers doing business with controlled business arrangements. The provisions of the Rule for which comments are invited are: 1. Section 3500.14(g)(2)(ii) which provides that section 8 RESPA does not prohibit "An employer's payment to its own employees for any referral activities * * *".

2. Section 3500.14(g)(2)(iii) which provides that Section 8 of RESPA does not prohibit "Any payment by a borrower for computer loan origination services, so long as the disclosure set forth in appendix E of this part is provided the borrower."

3. Section 3500.13(b)(2) which provides that "in determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition."

4. Section 3500.15(b)(1) in controlled business situations provides for a "written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in appendix D of this part" of certain information regarding the ownership and financial relationships between referring and referred to parties, and certain timing and other methods for disclosure.

The preamble to the November 2, 1992 Rule, 57 FR 49600–49606, provides background regarding many of these provisions.

With respect to item 1, the Department is interested in receiving comments on how payment practices under this exception may benefit or harm consumers. Concerning item 2, the Department seeks comments as to whether further clarifications or additional conditions regarding CLOs are needed or desirable to protect consumers, particularly if any payment for the CLO service comes directly or indirectly from a Lender. Comments regarding adequacy of disclosures when a mortgage broker uses a CLO system are also requested.

In connection with item 3, the Department requests comments regarding whether the Secretary should establish standards to evaluate provisions in state laws to determine whether such laws provide greater protection to consumers. The Department also requests any other comments or opinions regarding this § 3500.13(b)(2) provision.

Under item 4, the Department seeks views as to whether these controlled business disclosures are adequate to protect the consumer, and, if not, how they might be improved.

After consideration of written comments received in response to this Notice and after the informal hearing held by the Department at the Date, Time and Place set forth above, the Department will determine whether to:

(1) Leave in place the existing rule language;

(2) If warranted, conduct further rulemaking, including issuance of Interpretive Rules;

(3) Recommend legislative action; or

(4) Take any other course of action deemed appropriate.

The Secretary cautions that these administrative actions to invite comments and schedule a hearing do not have any current impact on the effectiveness of the Rule. The Rule is fully effective at this date and will only be altered or interpreted by rulemaking under the Act and regulations if the Secretary determines such action is warranted.

**Public Participation**

Any member of the public who wishes to submit written comments in response to this notice may submit comments from the date of publication of this notice until the closing date set forth above under Date for Comments. Comments should not exceed ten pages per commenter per identified subject, and should state on their face whether the comment relates to items 1, 2, 3, or 4 or any combination. Written comments or materials will be received, whether or not the commenter participates in the hearing.

Any member of the public who wishes to participate in person in the informal hearing under this notice must: Submit his/her name and the name of his/her organization, if any, to the contact person listed above 15 days before the date of the hearing; specify by number, as set forth above, which issues or issues he/she wishes to testify on; and provide a one-sentence summary of the presenter's position on each such issue. It is anticipated that there will be substantial demand to make presentations. Depending on such demand, it may be necessary for the Department to limit the time and number of presenters on the same subject, to appoint spokespersons for particular subject areas, to run simultaneous hearing sections, or to otherwise take necessary actions to organize this hearing in the most effective and efficient manner. In any event, oral presenters will not have more than 10 minutes each.

If an oral presenter wishes to have his/her written comments distributed at the hearing, it is recommended that 200 copies be brought to the hearing site at the opening hour of the hearing to be placed on a table which will be set up for such purpose. The Department takes no responsibility for the distribution of any presenter's comments.

**Authority**

This comment period and informal public hearing are being held under the authority of section 19 of the Real Estate Settlement Procedures Act (RESPA, 12 U.S.C. 2601 et seq.) that authorizes the Secretary of Housing and Urban Development to hold hearings in furtherance of the Secretary's responsibilities under such Act.

Dated: June 30, 1993.

**Nicolas Retsinas,**

*Assistant Secretary for Housing, Federal Housing Commissioner.*

[FR Doc. 93–15912 Filed 7–1–93; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 935

### Ohio Permanent Regulatory Program; Normal Husbandry Practices

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** OSM is reopening the public comment period for Revised Program Amendment Number 61 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns vegetation maintenance practices which Ohio would not consider augmentative and which would not restart the period of extended responsibility for revegetation success.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on July 21, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on July 16, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 13, 1993.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Discussion of the Proposed Amendments**

By letter dated February 11, 1993 (Administrative Record No. OH–1831), Ohio submitted proposed Program Amendment Number 61. In this amendment, Ohio proposed to revise OAC section 1501:13–9–15(F) to expand and clarify the vegetative management practices which Ohio will not consider augmentative and which will not restart the revegetation responsibility period.

OSM announced receipt of proposed Program Amendment Number 61 in the April 1, 1993, **Federal Register** (58 FR 17173), and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 3, 1993. The public hearing scheduled for April 26, 1993, was not held because no one requested an opportunity to testify.

On April 30, 1993, representatives of OSM and Ohio met informally to

discuss OSM's initial questions and comments about the proposed amendment. In response to that meeting, Ohio submitted Revised Program Amendment Number 61 by letter dated June 11, 1993 (Administrative Record No. OH–1888). In this revised amendment, Ohio is proposing two further revisions to OAC 1501:13–9–15:

(1) *Paragraph (F)(5)(b)*: Ohio is revising the previously proposed new language in this paragraph to provide that reseeding of areas unavoidably disturbed because of repairs due to land movement or third party interference will not be considered augmentative provided that the total acreage of areas reseeded during any one year shall not exceed ten percent of the total affected average. The previously proposed language had referred to ten percent of the total permitted acreage.

(2) *Paragraph (F)(7)*: Ohio is revising the previously proposed new language in this paragraph to provide that, for the purposes of paragraphs (F)(5) and (F)(6), permanent vegetation that is established or reestablished on these areas must have been seeded a minimum of twelve months prior to the request for phase III bond release. The previously proposed language had required that vegetation must have been in place a minimum of 90 days prior to the phase III bond release request and had included a provision to lengthen this 90-day period in cases of planting after August 1 of a given year.

Also, as part its June 11, 1993, resubmission of Revised Program Amendment Number 61, Ohio has submitted an excerpt from the 4th edition of the textbook, Forage Management in the North (Authors: Smith and Dale). Ohio intends this excerpt to support the allowance for non-augmentative reseeding of legumes within three years of the initial planting as proposed in the initial version of Program Amendment Number 61 at OAC 1501:13–9–15 paragraph (F)(4)(d).

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Specifically, OSM is requesting comment and any available supporting documentation on whether reseeding of areas disturbed due to land movement and subsequent repair activities should be considered an augmentative practice requiring the restarting of the permittee's period of responsibility for reclamation success. The Agency seeks information on the extent to which land movement is found on unmined land and whether repair and reseeding is the customary or usual practice. The Agency also requests similar comment and documentation for areas disturbed due to third party interference.

The public is invited to comment on the appropriateness of the area limits which Ohio proposes to set when determining whether the reseeding of areas disturbed by land movement and third party interference is augmentative. The proposed area limits are 10 percent of the total affected acreage with no single area exceeding three acres in size.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on July 13, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 93–15849 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–05–M

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## 30 CFR Part 935

## Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing the receipt of a proposed Program Amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposes to revise the Ohio Administrative Code (OAC) 1501:13–9–15 and adopt new policy/procedure directives which govern the use of statistical sampling methods for evaluating ground cover and tree stocking at the time of bond release. The amendment is intended to make the Ohio program as effective as the corresponding Federal regulations.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on August 5, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on August 2, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 21, 1993.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the

proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

## II. Discussion of the Proposed Amendment

On January 14, 1993 (58 FR 4330), the Director of OSM approved Ohio's proposed revision to Ohio Administrative Code (OAC) section 1501:13–9–15 paragraph (J)(1) adopting the requirement that success of revegetation shall be measured using a statistically valid sampling technique with a 90-percent statistical confidence interval. However, the Director did not approve Ohio's visual (ocular) method of evaluating ground cover as a statistically valid means of performing that sampling. Therefore, the Director continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid sampling technique for evaluating ground cover in order to be as effective as the corresponding Federal regulations at 30 CFR 816.116(a).

By letter dated June 11, 1993 (Administrative Record No. OH–1889), Ohio submitted a new Program Amendment as required by 30 CFR 935.16(f). In this amendment, Ohio proposes to delete the recently approved requirement at OAC 1501:13–9–15 paragraph (J)(1) for statistical sampling and to substitute a mixed use of ocular evaluation and statistical sampling under new paragraphs (G)(3)(b)(ii) and (iii) and revised paragraph (K)(1).

### *A. Pasture and Grazing Land*

Ohio is proposing new paragraphs (G)(3)(b) (ii) and (iii) which provide that Ohio would use its current ocular evaluation method to conduct an initial determination of the success of herbaceous ground cover on pasture and grazing land. If the ocular method indicates that the total areas with sparse or barren cover are within ten percent of exceeding the current allowable limits set in paragraphs (G)(3)(b)(i) (b) and (c), Ohio would conduct a statistical test of the ground cover using the Rennie-Farmer point-intercept sampling method. This statistical sampling would measure the overall success of revegetation for the entire proposed bond release area against a single 70-percent ground cover standard.

Ohio would consider the revegetation of a proposed bond release area to be successful if:

(1) An initial ocular evaluation finds that no single barren area exceeds the maximum size limit set by paragraph (G)(3)(b)(i)(d) and sparse and barren areas are less than 90 percent of the allowable limits set in paragraphs (G)(3)(b)(i) (b) and (c), or

(2) A later statistical test estimates overall ground cover to be equal to or greater than 70 percent.

As part of and in support of this amendment, Ohio has submitted a draft Policy/Procedure Directive providing additional details of the proposed evaluation and sampling methods which Ohio inspectors will use in evaluating herbaceous ground cover on pasture and grazing areas.

### *B. Areas Where Woody Plants are the Primary Vegetation*

Ohio is proposing to revise OAC section 1501:13–9–15 paragraph (K)(1) to provide that sampling techniques for measuring success of woody plants shall use a 90-percent statistical confidence interval (i.e. one-sided test with a 0.10 alpha error). Ohio's cover letter for the amendment indicates that, for this test, Ohio will use a fixed-radius circular plot method as described in a technical paper submitted as part of the amendment. Ohio's cover letter also indicates that Ohio will develop a Policy/Procedure Directive in the near future to adopt this method for use under the Ohio Program.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

### *Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

### *Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on July 21, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

### *Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each public meeting will be made a part of the Administrative Record.

**IV. Procedural Determination**

*Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

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

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

*Regulatory Flexibility Act*

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

**List of Subjects in 30 CFR Part 935:**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 93–15850 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 372

[OPPTS–400073; FRL–4182–3]

## Glycol Ethers Category; Toxic Chemical Release Reporting; Community Right-To-Know

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to redefine the glycol ethers category on the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPA is proposing to change the present definition of the glycol ethers category to exclude the high molecular weight glycol ethers that do not, in EPA's judgement, meet the criteria set out in EPCRA section 313(d). The proposed definition would retain in the category all glycol ethers that are known to or may be reasonably anticipated to cause adverse human health effects. The proposed redefinition of the glycol ethers category is based on EPA's review of available human health data on short chain length glycol ethers. EPA believes that the category can be redefined to exclude the surfactant glycol ethers. The Agency also believes it may be appropriate to further narrow the definition beyond this exclusion of surfactants. However, based on current data, EPA is not able to establish a molecular "size" or weight above which there are no concerns for adverse effects on human health.

**DATES:** Written comments on this proposed rule must be received by September 7, 1993.

**ADDRESSES:** Written comments should be submitted in triplicate to: OPPT Document Control Officer, TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, TS–790, Environmental Protection Agency, E–G99, 401 M St., SW., Washington, DC 20460, Attn: Docket Number OPPTS–400073.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

*A. Statutory Authority*

This action is issued under section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

*B. Background*

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has both added chemicals to, and deleted chemicals from, the original statutory list.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members

of the section 313 metal compound categories.

## II. Description of the EPCRA Section 313 Glycol Ethers Category

When Congress enacted EPCRA, including the original list of chemicals subject to section 313 reporting, the glycol ethers category was included on the list with no clarification as to how that category should be defined. In developing the proposed and final rules implementing section 313 of EPCRA, EPA refrained from making revisions to the list of chemicals subject to section 313 (53 FR 4500, February 16, 1988). However, it was clear that definitions of certain categories were necessary. At the time, the EPCRA glycol ethers category was defined to be consistent with a project that was defining the glycol ethers boundaries under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601). The current definition follows:

$R\text{-}(OCH_2CH_2)_n\text{-}OR'$

Where: R= Alkyl (straight or branched chain) or aryl (phenyl or alkyl substituted phenyl)

R'= R, H, or other group which can be reacted to yield "H"

n = 1, 2, or 3

The "R" groups consist only of carbon and hydrogen chains. The degree of ethoxylation ($-OCH_2CH_2-$) is described by the group within the parentheses where "n" dictates the number of times the ethoxy group repeats. The "R'" group is any group that can be removed.

At the time the category was defined, a limit on the size of the attached alkyl group could not be made based on the available information.

The current EPCRA section 313 glycol ethers category definition includes non-ionic surfactants (high molecular weight glycol ethers) with a glycol ether moiety. Non-surfactant glycol ethers are generally recognized as having short-chain R groups and low degrees of ethoxylation (n less than 4). Glycol ether surfactants, however, can have large R groups as well as a large degree of ethoxylation. Where non-surfactant glycol ethers are generally produced as a single chemical entity, glycol ether surfactants are usually mixtures of chemical substances containing a range of R groups and varying degrees of ethoxylation (i.e., R = $C_8$ to $C_{18}$; n averages 8). Low molecular weight glycol ethers are used as general solvents, while glycol ether surfactants are used to solubilize oil-based chemicals into water solutions.

Under section 313, glycol ethers are currently defined to include chemicals which fit the above generic structure where "n" (or the degree of ethoxylation) is three or less. No size restriction was placed on the alkyl chain length. There is general agreement within EPA and in the regulated community on the difference between glycol ether surfactants and glycol ether solvents, with respect to both their structure and use.

Many glycol ether surfactants are manufactured as mixtures. The components of these mixtures have the same pendant alkyl, aryl, or alkyl substituted aryl (i.e., R in the definition given above) but have varying degrees of ethoxylation (i.e., $(CH_2\text{-}CH_2O)_n$, where n = 1 to x).

Under TSCA, these glycol ether surfactant mixtures are considered as a single glycol ethers entity for purposes of the TSCA section 8(b) Inventory. In contrast, under section 313 of EPCRA, these surfactants have been considered as mixtures of glycol ethers. Only those glycol ether components of the mixture with one, two, or three ethoxy groups meet the EPCRA section 313 glycol ether definition. The difference in how glycol ethers are treated under TSCA and EPCRA may have resulted in under-reporting releases of surfactant glycol ethers under EPCRA section 313.

In evaluating the current scope of the glycol ethers category, EPA believes that changing the definition will: (1) Eliminate reporting of surfactants that do not meet the EPCRA section 313(d) criteria, and (2) reduce considerably the number of glycol ethers that would meet the proposed definition and be reportable under EPCRA.

## III. EPA's Proposed Category Definition

EPA has evaluated the current scope of the section 313 glycol ethers category and believes that it may be overly broad. The category includes substances that the industry does not consider to be glycol ethers. Also, it is apparent that this category contains members that do not meet the criteria for listing.

The current section 313 glycol ethers category can be viewed as consisting of three groups:

(1) Low molecular weight glycol ethers that are known to cause blood, developmental, and reproductive effects in animal studies and meet the criteria in section 313(d)(2)(A) and (B).

(2) High molecular weight glycol ethers (typically surfactants) that are not expected to meet the criteria for listing.

(3) Glycol ethers which may be of concern based on structure activity relationships with the low molecular weight glycol ethers.

The regulated community has long claimed that the high molecular weight glycol ether surfactants are not glycol ethers, do not exhibit adverse health effects of the low molecular weight glycol ethers, and should not be subject to the reporting requirements of EPCRA section 313. In addition, industry also believes that there are chemicals in group three listed above that are not toxic to humans or the environment, and should not be subject to the reporting requirements of section 313.

EPA has reviewed the current glycol ethers category and believes the category can be redefined to exclude the surfactant glycol ethers (group two above). However, it does not appear that it can be more narrowly defined at this time.

EPA is proposing that the following formula be used to determine if a compound is included in the glycol ethers category:

$R\text{-}(OCH_2CH_2)_n\text{-}OR'$

Where: n = 1, 2, or 3

R = alkyl $C_7$ or less

or R = phenyl or alkyl substituted phenyl

R' = H or alkyl $C_7$ or less

or carboxylic acid ester (for example, acetate),

sulfate,

phosphate,

nitrate, or

sulfonate.

## IV. EPA's Review of Glycol Ethers

### *A. Human Health Effects*

Low molecular weight glycol ethers (group one above) are known to cause various adverse human health effects and, thus, meet the requirement for listing under section 313(d)(2)(A) and (B) based on their potential toxicity. Most of the available human health data on glycol ethers is based on animal testing of the short-chain length glycol ethers (e.g., ethylene glycol monomethylether) (Ref. 2). Data indicate that as the molecular weight (or the length of the pendant alkyl chain) increases, the human health effects associated with glycol ethers decrease. While it may be recognized that the higher molecular weight glycol ethers may be of low concern for human health effects, there are not sufficient data to establish a size or molecular weight at which point these effects are no longer likely to occur.

EPA has reviewed the literature for the glycol ethers for metabolism, developmental toxicity, reproductive toxicity, and general systemic toxicity, particularly blood effects (Refs. 1 and 2). Specifically, short-chain ethylene glycol ethers, that is an alkyl chain length of one to four, are absorbed by all routes and have caused irritation of skin, eyes and mucous membranes; hemolysis, bone-marrow damage, and leukopenia

of both lymphocytes and granulocytes; direct and indirect kidney damage; liver damage, and central nervous system (CNS) depression. The systemic toxicity of long-chain glycol ethers is a matter of uncertainty. Data have not been found on long-chain glycol ethers, that is those glycol ethers with an alkyl chain length greater than six carbons.

Recently the Agency received two epidemiology studies under section 8(e) of TSCA (Refs. 7 and 8). These studies appear to link some ethylene glycol ethers and derivatives with miscarriages in exposed workers. This is similar to reproductive effects seen in animal studies. All the chemicals identified in these two studies fit the proposed category definition.

With respect to the glycol ethers and developmental effects, there is evidence that the toxicity is reduced going from the methyl to butyl ether, and that it is reduced going from the ethylene glycol to the triethylene glycol (Ref. 4). Test results support the hypothesis that increasing the alkyl chain length reduces the developmental toxicity.

Standard developmental toxicity studies of ethylene glycol monohexyl ether in F344 rats and New Zealand White rabbits show evidence of maternal toxicity after exposure to 41.1 and 79.2 parts per million (ppm). There is no evidence of developmental toxicity (Refs. 4 and 5). However, data on glycol ethers with pendant alkyl groups of one to six carbons do not indicate that for maternal toxicity there is a trend based on chain length.

Based on test data, EPA concludes that there is significant concern for acute and chronic human health effects where the chain length is in the one to four carbon range. For glycol ethers in which R is five to seven carbons, there is sufficient evidence to establish that adverse human health effects can be reasonably anticipated to occur. Thus, the continued listing of these glycol ethers is warranted (Ref. 4). There are no data that indicate that glycol ethers with pendant alkyl chains of eight or more carbons can reasonably be anticipated to cause adverse effects in humans.

2-Phenoxyethanol is known to cause hemolysis. No data have been found on alkyl substituted phenoxyethanol derivatives. EPA is requesting comment on limiting the size of the alkyl group for alkyl substituted phenyl glycol ethers.

For the foregoing reasons, EPA believes that there is insufficient evidence to establish that long-chain glycol ethers (greater than or equal to eight carbons) can reasonably be anticipated to cause adverse acute or chronic human health effects, and hence do not meet the criteria for listing under section 313(d)(2)(A) or (B). However, EPA believes that the low molecular weight glycol ethers do meet the listing criteria under section 313(d)(2)(A) and (B).

*B. Environmental Effects*

None of the alkylethoxylates which fit the glycol ethers category:

$R - (OCH_2CH_2)_n - OR'$

where R′ = H, or other group which can be reacted to yield "H", R generally equal to alkyl, aryl, or alkyl substituted aryl, and n = 1 to 3, have acute or chronic toxicity values for aquatic organisms equal to or less than 0.100 milligram per liter (mg/L) (ppm) (Ref. 3). Tridecyloxyethanol is predicted to be the most toxic, based on the structure activity relationship of the neutral organic chemicals. The acute toxicity value is predicted to be 0.24 mg/L and the chronic toxicity value would be 0.024 mg/L.

None of the compounds in the current glycol ethers category meet the requirement for listing under section 313(d)(2)(C) based on their potential ecotoxicity.

*C. Environmental Fate*

EPA believes that the EPCRA section 313 glycol ether definition should be limited to the two following groups of glycol ethers: (1) Those glycol ethers that upon removal of readily hydrolyzable R′ groups (e.g. acetate) yield the monoalkyl, monophenyl, or monoalkylphenyl glycol ether of the following structure:

*Structure 1*

$R - (OCH_2OCH_2)_n - OH$

where R is either an alkyl moiety of seven or fewer carbons, phenyl, or alkyl substituted phenyl; and (2) glycol ethers of the following structure:

*Structure 2*

$R - (OCH_2OCH_2)_n - O - R'$

where R is either an alkyl moiety of seven or fewer carbons, phenyl, or alkyl substituted phenyl and R′ is an alkyl moiety of seven or fewer carbons.

*Group 1 glycol ethers.* EPA believes that, for this group of glycol ethers, R′ be defined as those groups that can be hydrolyzed under environmental or gastric conditions to yield structure 1 shown above. EPA proposes that R′ include the following readily hydrolyzable groups: carboxylic acid ester, phosphate, sulfate, nitrate, and sulfonate. EPA requests comment on what other hydrolyzable groups should be included in the definition of R′. EPA requests comment on any limitations that should be applied to R′ equal carboxylic acid ester.

*Group 2 glycol ethers.* EPA believes that for this group of glycol ethers R′ be defined as an alkyl moiety of seven or fewer carbons. As ethoxy groups are expected to degrade anaerobically and aerobically more readily than branched alkyl groups, the Agency requests comment on whether R′ should be limited to straight chain hydrocarbons of seven or fewer carbons.

**V. Rationale for Redefinition**

EPA's concerns for these chemicals is based on a review of available human health data on short-chain length glycol ethers. None of the chemicals in the current glycol ethers category meet the toxicity criteria of section 313(d)(2)(C) based on their ecotoxicity. EPA believes that the category can be redefined to exclude the surfactant glycol ethers. These high molecular weight glycol ethers do not meet the listing criteria in section 313(d)(2)(A) or (B). The Agency believes it may be appropriate to further narrow the definition beyond this exclusion of surfactants. However, based on current data the Agency is not able to establish a molecular "size" or weight above which there are no concerns for acute or chronic human health effects.

**VI. Regulatory Status**

Glycol ethers are also listed as a category of "hazardous air pollutants" (HAP) under section 112(b) of the Clean Air Act (CAA), 42 U.S.C. section 7412(b) as amended, and, by virtue of their status as HAPs under the CAA, as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. section 9601(14). The current definition of the glycol ethers category is identical under the CAA, CERCLA, and EPCRA. This proposal only affects the definition of the glycol ethers category under section 313 of EPCRA, set out in 40 CFR 372.65(c). However, the Agency's Office of Air and Radiation intends to propose to redefine the scope of the glycol ethers category listing under section 112(b) of the CAA in a manner consistent with this proposal in the near future.

**VII. Rulemaking Record**

The record supporting this proposed rule is contained in the docket number OPPTS–400073. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. NCIC is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

## VIII. Request for Public Comment

EPA requests comment on this proposal to modify the EPCRA section 313 glycol ethers category. Specifically, EPA requests comment on its proposed definition of R′: (1) What chemical functionalities that readily come off either *in vivo* or in the environment other than those listed above in Unit III of this preamble should be included as R′; and (2) should the definition of R′ include only straight chained alkyl groups of seven or fewer carbons or both straight and branched alkyl groups of seven or fewer carbons.

EPA requests comment on limits to the alkyl group in alkyl substituted phenoxy glycol ethers. Particularly, EPA requests data that would support the limitation on the size of this alkyl group.

Comments should be submitted to the address listed under the ADDRESSES unit at the beginning of this document. All comments must be received by EPA on or before September 7, 1993.

## IX. References

(1) USEPA, OPTS, HERD. 1991a. Review of Metabolism of Longchain Glycol Ethers. Memorandum from L. C. Keifer to R. A. Jones, HERD, March 29, 1991.

(2) USEPA, OPTS, HERD. 1991b. Overview of Systemic Toxicity of Glycol Ethers. Memorandum from J. J. Murphy to R. A. Jones, HERD, April 16, 1991.

(3) USEPA, OPTS, HERD. 1990. EPCRA 313 Glycol Ethers Category. Memorandum from M. Zeeman to M. Townsend, HERD, November 21, 1990.

(4) USEPA, OPTS, HERD. 1991c. Comments on Glycol Ether Definition. Memorandum.

(5) USEPA, OPTS, HERD. 1991d. Additional Comments on Glycol Ethers. Memorandum.

(6) USEPA, OPPTS, ETD. 1992. Economic Report in Support of an Agency Action to Redefine Glycol Ethers in the SARA Section 313 List of Toxic Chemicals. June 23, 1992. pp. 1–17.

(7) IBM, September 15, 1992. Letter to USEPA Concerning Ongoing Epidemiology Study at Two Semi-conductor Manufacturing Facilities.

(8) SIA, November 30, 1992. Epidemiology Study Report Conducted at Fourteen Semi-conductor Manufacturing Facilities.

## X. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Executive Order (E.O.) 12291 requires each Federal agency to classify as "majoR" any rule likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

EPA's economic analysis estimates that under the proposed definition up to 90 percent of the glycol ethers would no longer be reportable. The savings to industry would range between $540,000 and $745,000. Small businesses are not expected to be adversely affected by this proposal since the rule would increase the likelihood that they would not be required to report glycol ether releases (Ref. 6). EPA anticipates that this proposed redefinition will not have a significant effect on competition and will significantly decrease costs. Therefore, EPA has determined that this proposed rule is not "major."

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses (specifically, those facilities with fewer than 10 full-time employees) from reporting. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Thus, many small facilities will not incur any regulatory costs in association with this proposed rule. Small businesses are not expected to be adversely affected by this proposal, since the rule would increase the likelihood that they would not be required to report glycol ether releases.

Therefore, EPA concludes that this proposed rule is not likely to significantly impact small entities.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0093.

The public reporting burden for collection of information under section 313 is estimated to average 43 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposal would reduce the number of responses required, thus reducing overall burden.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

### List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 28, 1993.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore it is proposed that 40 CFR part 372 be amended to read as follows:

## PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

**Authority:** 42 U.S.C. 11013 and 11028.

2. In § 372.65(c) by revising the category, glycol ethers to read as follows:

**§ 372.65 Chemicals and chemical categories to which the part applies.**

* * * * *

(c) * * *

| Category name | Effective date |
|---|---|
| * * * * * | |
| Glycol Ethers ..... | 1/1/94 |
| R - $(OCH_2CH_2)_n$ - OR′ | |
| Where: n = 1, 2, or 3 | |
| R = alkyl $C_7$ or less | |
| or R = phenyl or alkyl substituted phenyl | |
| R′ = H or alkyl $C_7$ or less | |
| or carboxylic acid ester | |
| sulfate | |
| phosphate | |
| nitrate | |
| sulfonate | |
| * * * * * | |

[FR Doc. 93–15861 Filed 7–2–93; 8:45 am]
BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 93–177; FCC 93–315]**

### AM Directional Antennas

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** The action being taken in this item is an inquiry into the policies and procedures governing proof-of-performance evaluations of antennas in the AM Radio Service. This action is necessary in order to determine what, if any, modifications would be appropriate to make to these policies and procedures in light of new technologies now available for such evaluations. The intended effect of the inquiry is to make AM antenna evaluations more accurate and, simultaneously, remove any unnecessary measurement burdens and/or expenses.

**DATES:** Comments due on or before August 20, 1993 and reply comments due on or before September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Johnson, Mass Media Bureau, Engineering Policy Branch, (202) 632–9660.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Inquiry in MM Docket 93–177 adopted June 14, 1993 and released on June 29, 1993. The complete text of the Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M St. NW., Washington, DC and may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M St. NW., Washington, DC 20037.

### Synopsis of Notice of Inquiry

1. A petition for rulemaking was submitted by the technical consulting firms duTreil, Lundin & Rackley, Inc.; Hatfield & Dawson Consulting Engineers, Inc.; Lahm, Suffa & Cavell, Inc.; Moffet, Larson & Johnson, Inc.; and Silliman & Silliman requesting that the Commission initiate an inquiry into the policies and rules governing performance verification of AM Radio Service directional antenna arrays. Such arrays typically consist of two or more towers which are fed power from the AM station transmitter so as to direct the signal towards desired service areas and away from areas in which interference with other stations might occur. A proof of performance for a directional array involves actual measurements of antenna currents and other array parameters, and may necessitate adjustments to the array to bring it within the provisions of the Commission's rules and the terms and conditions specified on the station license.

2. The genesis of the Commission's regulatory structure for such arrays is the former Standards of Good Engineering Practice, dating from 1939. Although the Commission's rules governing AM arrays have been amended many times in the interim, no systematic reevaluation has taken place. Petitioners argue that the time for such a reevaluation has now arrived as a result of the development of numerous powerful computer models which calculate array patterns and other array parameters, and also because many AM arrays are now located in urban and suburban areas where measurement of array patterns is difficult and expensive.

3. The Commission concurs with Petitioner's arguments, especially in light of the recent adoption of MM Docket 87–267, which restructured the AM Service and made available new frequencies directly above the current AM band edge. As commenters in that proceeding noted, misadjustment of AM directional arrays was a major contributing cause of high interference levels in the current band and proper adjustment of any directional arrays licensed in the new band would be very important. For this reason, and because the Commission's regulations have not been comprehensively evaluated in light of recent technological developments, it would now be appropriate to initiate a Notice of Inquiry into this matter.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–15829 Filed 7–2–93; 8:45 am]
BILLING CODE 6712–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; 90-Day Finding on and Commencement of Status Review for a Petition to List the Sacramento Splittail and Longfin Smelt

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

**ACTION:** Notice of petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the Sacramento Splittail (*Pogonichthys macrolepidotus*) and longfin smelt (*Spirinchus thaleichthys*) under the Endangered Species Act of 1973, as amended (Act). The petition has been found to present substantial information indicating the requested action may be warranted. Through issuance of this document, the Service is commencing a formal review of the status of these species.

**DATES:** The finding announced in this document was made on June 24, 1993. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below until further notice. All comments and materials should be submitted at the earliest possible date to ensure their use in the final decision.

**ADDRESSES:** Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Sacramento Field Office, Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Nadine R. Kanim at the above address (916/978–4866).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding, is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in

the **Federal Register**. If the Service finds that a petition presents substantial information indicating that the requested action may be warranted, then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted within 1-year of the receipt of a petition that presents substantial information.

On November 5, 1992, the Fish and Wildlife Service received a petition from Mr. Gregory A. Thomas of the Natural Heritage Institute to add the Sacramento splittail (*Pogonichthys macrolepidotus*) and longfin smelt (*Spirinchus thaleichthys*) to the List of Endangered and Threatened Wildlife and to designate critical habitat for each species in the Sacramento and San Joaquin Rivers and the Sacramento-San Joaquin River Estuary (Delta), California. In his November 15, 1992, letter, Mr. Thomas identified the following eight organizations as having submitted the petition: American Fisheries Society, Bay Institute of California, Natural Heritage Institute, Planning and Conservation League, Save San Francisco Bay Association, Friends of the River, San Francisco Baykeeper, and the Sierra Club. The petition, supporting documentation, and other documents have been reviewed to determine if substantial information has been presented indicating that the requested action may be warranted. This notice constitutes the 90-day finding for the petition, in accordance with section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended.

The Sacramento splittail is a large cyprinid that frequently reaches 12 inches in length (Moyle 1976; Eddy and Underhill 1983; Moyle and Yoshiyama 1992). Adults are characterized by an elongated body; small, blunt head; barbels usually present at the corners of the slightly subterminal mouth; and distinct nuchal hump. This species can be distinguished from other minnows in the Central Valley of California by the enlarged dorsal lobe of the caudal fin. Sacramento splittail are a dull, silvery-gold on the sides and olive-grey dorsally. During spawning season, the pectoral, pelvic, and caudal fins are tinged with an orange-red color. Males develop small white nuptial tubercles on the head. Because the Clear Lake splittail (*Pogonichthys ciscoids*) has been extinct since the early 1970's, the Sacramento splittail represents the only remaining species in its genus.

Sacramento splittail are endemic to California's Central Valley where they were once widely distributed (Moyle 1976, Moyle *et al.* 1989, Moyle and Yoshiyama 1992). In recent times, dams and diversions increasingly have restricted their upstream access to the large rivers, and the species is now most often found in the northern and western sections of the Delta, Suisun Bay, Suisun Marsh, and Napa Marsh.

Although primarily a freshwater species, the Sacramento splittail can tolerate salinities as high as 10 to 18 parts per thousand (ppt) (Moyle 1976, Moyle and Yoshiyama 1992). Spawning seems to be associated with rising water temperatures and occurs from late January to early July over flooded vegetation in the tidal freshwater and euryhaline habitats of Delta marshes and sloughs and slow moving reaches of the large rivers. The modifications of the structure, hydraulics, and hydrology of these habitats have negatively affected spawning habitat, nursery habitat, and migratory pathways. That is the primary reason for the decline of this species.

The longfin smelt (*Spirinchus thaleichthys*), a member of the true smelt family Osmeridae, can be distinguished from other smelts occurring in California by its long pectoral fins, incomplete lateral line, weak or absent striations on the opercular bones, low number of lateral line scales, and long maxillary bones (McAllister 1963, Miller and Lea 1972, Moyle 1976, Moyle and Yoshiyama 1992). The pectoral fins often extend as far as the base of the pelvic fins, and the maxillary bones reach underneath the eyes. This fish, which often reaches 6 inches in length, has translucent silver sides and an olive to iridescent pink back.

The longfin smelt is one of three species in its genus; the night smelt (*S. starksi*) occurs in California and the shishamo (*S. lanceolatus*) occurs in northern Japan (McAllister 1963). Because of its distinctive characteristics, the Delta population of longfin smelt was once described as a species separate from more northern populations (Moyle 1976, Moyle and Yoshiyama 1992). As presently described, this species' range extends from the Delta to Prince William Sound, Alaska. However, the resident Delta population is genetically isolated from the nearest known populations that occur in Humboldt Bay and the Klamath River estuary (Moyle 1976, Moyle and Yoshiyama 1992).

The longfin smelt is an anadromous euryhaline species, with a 2-year life cycle, that can tolerate salinities ranging from that of freshwater to pure sea water (Moyle 1976, Moyle and Yoshiyama 1992). Spawning occurs in freshwater over sandy-gravel substrates, rocks, or aquatic plants. Spawning may take place as early as November and extend into June, although the peak spawning period is from February to April. The principal nursery habitat for larvae are the productive waters of Suisun and San Pablo Bays. Adults are found mainly in Suisun, San Pablo, and San Francisco Bays although their distribution is shifted upstream in years of low river outflows. Sacramento-San Joaquin River outflow into the bays has been positively correlated with longfin smelt recruitment, possibly because higher outflow increases larval dispersal and the area available for rearing (Stevens and Miller 1983).

The petitioners seek protection under the Act for the Sacramento splittail because of the extreme constriction of its range compared with historical distribution and the accelerated decline in its abundance since the early 1980's. The number of Sacramento splittail in the California Department of Fish and Game (CDFG) 1992 fall mid-water trawl survey is the third lowest ever recorded in this survey's 24 year history (D. Sweetnam, CDFG, pers. comm., 1993). Once one of the most numerous fishes caught in trawl surveys of the Delta, abundance estimates indicate that the longfin smelt has experienced an exponential decline since 1982 (D. Sweetnam, CDFG, *in litt.*, 1992).

The petition and supporting information describe a variety of factors affecting the Delta ecosystem that have led to the decline of the Sacramento splittail, longfin smelt, and a suite of other fishes, including the federally threatened winter-run chinook salmon and delta smelt. Principal among these factors are the altered hydraulics and reduced outflow of the Delta caused by export of freshwater from the Sacramento and San Joaquin Rivers to the Federal and State water diversion projects. Additional threats to these species include: entrainment at pumping plants and in-Delta diversion sites, loss of spawning and nursery habitat as a consequence of draining and diking for agriculture and reduction in the availability of highly productive brackish water habitat, urban and agricultural pollution, inadequate regulatory mechanisms, introduction of exotic species, and the exacerbation of the effects of these factors as a result of 6 years of drought.

The Sacramento splittail is designated as a Category 2 candidate species by the Service (56 FR 58816) and is classified as a "Species of Special Concern" by the California Department of Fish and Game.

The petition has been reviewed by staff at the Sacramento Field Office in Sacramento, California, and the Regional Office in Portland, Oregon.

The Service finds that the petitioner has presented substantial information indicating that the requested action may be warranted. This finding is based on the scientific and commercial information contained in the petition, referenced in the petition, and otherwise available to the Service at this time.

This finding initiates a status review for this species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

**References Cited**

Eddy, S. and J.C. Underhill. 1983. How to Know the Freshwater Fishes, Third Ed. Wm. C. Brown Co. Publishers, Dubuque, Iowa. 215 pp.

McAllister, D.E. 1963. A revision of the smelt family, Osmeridae. Bull. Natl. Mus. Canada. 191. 53 pp.

Miller, D.J., and R.N. Lea. 1972. Guide to the coastal marine fishes of California. Calif. Dept. Fish Game Fish Bull. 157. 235 pp Addendum.

Moyle, P.B. 1976. Inland Fishes of California. Univ. of California Press, Berkeley, CA. 405 pp.

Moyle, P.B., and R.M. Yoshiyama. 1992. Fishes, aquatic diversity management areas, and endangered species: A plan to protect California's native aquatic biota. Draft report prepared for California Policy Seminar, Univ. of Calif., Berkeley, CA. July 1992. 196pp.

Moyle, P.B., J.E. Williams, and E.D. Wikramanayake. 1989. Fish Species of Special Concern of California. Final Report prepared for State of California Dept. of Fish and Game, Inland Fisheries Division. Rancho Cordova, CA. 222 pp.

Stevens, D.E., and L.W. Miller. 1983. Effects of river flow on abundance of young chinook salmon, American shad, longfin smelt, and Delta smelt in the Sacramento-San Joaquin river system. N. Amer. Jour. Fish Manage. 3: 425–437.

**Author**

The primary author of this notice is Nadine R. Kanim (see **ADDRESSES** section).

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

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

**Authority:** 16 U.S.C. 1361–1407; 17 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

Dated: June 24, 1993.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 93–15881 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–55–M

# Notices

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

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 COMMERCE

### National Oceanic and Atmospheric Administration

### Endangered Species; Permits

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

**ACTION:** Notice of receipt of application for scientific research permit (P774#1).

Notice is hereby given that the National Marine Fisheries Service, Northeast Fisheries Science Center has applied in due form for a Permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to handle, tag, and release, 300 Loggerhead (*Caretta caretta*), 20 Leatherback (*Dermochelys coriacea*), and 10 each of Kemp's Ridley (*Lepidochelys kempi*), Hawksbill (*Eretmochelys imbricata*), and Green (*Chelonia mydas*) turtles. This research would take place within the Exclusive Economic Zone of the Atlantic Ocean and Gulf of Mexico, for a duration of five years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Services, 1335 East-West Hwy., Room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Glouchester, MA 01930 (508–281–9250).

Dated: June 28, 1993.

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

*Director, Office of Protected Resources.*

[FR Doc. 93–15765 Filed 7–2–93; 8:45 am]

BILLING CODE 3510–22–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Ground Based Radar (GBR) Family of Strategic and Theater Radars Environmental Assessment (EA); Finding of No Significant Impact

**AGENCY:** Department of Defense, United States Army.

**ACTION:** Finding of No Significant Impact.

**DESCRIPTION OF PROPOSED ACTION:** The proposed activities constitute the testing of the GBR project as a part of the defense acquisition process. Phase I of the testing will consist of fabrication and testing of both the Theater Missile Defense (TMD)–GBR and GBR–Test (GBR–T) at various Raytheon Company facilities in Massachusetts. Phase II will consist of installation, integration, and testing of the TMD–GBR at site R–409 on White Sands Missile Range (WSMR), New Mexico. In addition, GBR–T will be installed and tested on Building 1500 at U.S. Army Kwajalein Atoll (USAKA) in the Republic of the Marshall Islands. Phase III will consist of functional technology validation testing against target missiles. The TMD–GBR will be tested at sites R–409 and LC–39 on WSMR and at site IFC–25 located adjacent to WSMR on Fort Bliss. The successful completion of the activities will demonstrate TMD–GBR and GBR–T capabilities to integrate hardware and software, prove discrimination capabilities, and validate the functional technology against target missiles. The above actions have been addressed in the GBR Family of Strategic and Theater Radars EA, May 1993, which is incorporated by reference. In addition, in 1989, an environmental assessment for testing a similar ground based radar at Kwajalein Island, Kwajalein Atoll resulted in a Finding of No Significant Impact.

**ALTERNATIVES CONSIDERED:** Alternatives considered in the GBR Family of Radars EA in addition to the proposed actions include the following: Alternative test ranges; alternative sensors including existing ground based sensors, space-based sensors, ship-borne sensors, airborne sensors, and other ground-based sensing techniques; alternative siting locations (five sites for TMD–GBR and one site for GBR–T); and the No Action Alternatives which would defer the testing activities while continuing with sensor concept exploration activities.

**ANTICIPATED ENVIRONMENTAL EFFECTS:** The environmental consequences of TMD–GBR and GBR–T activities were determined to be not significant at the Raytheon Company facilities as well as the test sites at WSMR, Fort Bliss and USAKA. Kwajalein Island, Kwajalein Atoll is listed in the National Register of Historic Places. Potentially significant impacts could result from ground disturbing construction activities for facilities, utilities and infrastructure at each test range. These impacts will be mitigated by implementing preconstruction archaeological surveying, testing, and monitoring of selected sites prior to and during construction. The operation of the GBR will result in the generation of electromagnetic radiation (EMR). Potentially significant EMR impacts to public health and safety will be mitigated to a level of no significant impact by implementing operational safety measures, identifying safety zones for TMD–GBR only, utilizing a separate safety computer and EMR monitoring sensors for GBR–T only, and coordinating with range air control. Plant and wildlife species, including endangered and threatened species, will not be significantly affected by the activities due to the previously disturbed nature of the test sites and the low EMR/power density values on the ground near the radars. The power densities on the ground for the GBR–T

will not exceed 5 milliwatts per square centimeter average over 6 minutes within 2 kilometers of the radar and 1 milliwatt per square centimeter averaged over 6 minutes for distances beyond 2 kilometers. These power densities are within the American National Standards Institute (ANSI) standards for health and human safety. A separate safety computer will be utilized to calculate EMR fields, and ensure that ANSI safety standards are not exceeded. Sensors will also be installed to measure EMR fields, and ensure that safety standards are not exceeded. An EMR safety zone is not required for the GBR–T because ANSI standards will be met on the ground at all locations at USAKA. For the TMD–GBR, a 100 meter safety zone will be established in front of the radar antenna to meet the ANSI health and human safety standard. The GBR will have no significant effects on electroexplosive devices, electronic medical devices, existing radars, and communications equipment since appropriate mitigation measures associated with range operations will be followed. Ground water resources will not be significantly affected by any of the test activities. Potentially significant housing and office space impacts at USAKA, WSMR and Fort Bliss will be mitigated by the dedication of housing units to GBR project personnel and modification of existing structures for housing, office, and operations and maintenance space.

**CONCLUSIONS:** Based on the environmental impact analyses found in the GBR family of Radars EA, which are hereby incorporated by reference into this finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed testing activities will not have significant individual or cumulative impacts on the quality of the natural or the human environment. Because there would be no significant environmental impact resulting from implementation of the proposed activities, an Environmental Impact Statement is not required and will not be prepared.

**DEADLINE FOR RECEIPT OF WRITTEN COMMENTS:** There is a 30-day waiting period from the date of appearance of this FNSI in the Federal Register for the public to comment prior to implementation of the proposed testing activities.

**POINT OF CONTACT:** Persons wishing to comment may obtain a copy of the EA or inquire into this FNSI by writing to: Deputy Commander, U.S. Army Space and Strategic Defense Command, ATTN: Mr. Kenneth R. Sims, CSSD–EN–V, P.O. Box 1500, Huntsville, AL 35807–3801. Verbal comments and questions regarding the EA and FNSI may be directed to Mr. Sims at (205) 955–5075.

Dated: June 30, 1993.

**Lewis D. Walker,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).*

[FR Doc. 93–15816 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Army

### Military Traffic Management Command; Defense Transportation Tracking System (DTTS)

**AGENCY:** Military Traffic Management Command, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is expanding its Defense Transportation Tracking System (DTTS) to include Satellite Monitoring (SM) of Uncategorized Division 1.1 through 1.3 Ammunition and Explosives (A&E) effective October 1, 1993. Effective January 1, 1994, Satellite Monitoring will become a condition of motor transport for Categorized Arms, Ammunition and Explosives (AA&E) and Uncategorized Division 1.1 through 1.3 A&E shipments.

**ADDRESSES:** Military Traffic Management Command, ATTN: MTOP–S, 5611 Columbia Pike, Falls Church, VA 22041–5050.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert O. Jones, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1089.

**SUPPLEMENTARY INFORMATION:** The purpose of this article is to provide information on the expansion of the DTTS.

The DTTS General Officer Steering Committee (GOSC), comprised of membership from the military services and Defense Logistics Agency directors of logistics, have approved expansion of the DTTS to track Uncategorized Division 1.1 through 1.3 A&E effective October 1, 1993.

This represents the final step in a phased plan designed to expand tracking by DTTS to Security Risk Categorized (SRC) AA&E and Uncategorized Division 1.1 through 1.3 A&E shipments. SRC items, totalling about 32,000 shipments annually, are currently being tracked by DTTS. At least 17,000 additional, Uncategorized A&E shipments are expected to be tracked by DTTS each year.

The DTTS GOSC also approved that, effective January 1, 1994, Satellite Monitoring will be required as a condition of business for motor transport of Categorized AA&E and Uncategorized Division 1.1 through 1.3 A&E shipments. Accordingly, on that date, motor carriers will be required to include Satellite Monitoring charges in applicable AA&E transportation linehaul rates. Satellite Monitoring charges as an accessorial service will no longer be accepted for the affected AA&E shipments.

Carriers participating in the transportation of DOD AA&E are invited to provide MTMC any comments or concerns that they may have regarding the DTTS expansion or this notice. Comments should be to Commander, Military Traffic Management Command, ATTN: MTOP–Q, (Ms. Diana Locklear), 5611 Columbia Pike, Falls Church, VA 22041–5050, Tel: (703) 756–1149.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–15769 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–08–M

### Availability of Non-exclusive, Exclusive, or Partially Exclusive Licensing of a Foreign (non-U.S.) Patent Application

**AGENCY:** U.S. Army ARDEC, Pictinny Arsenal, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses under patent application Number PCT/US93/05040, filed May 5, 1993, Docket DAR–16–93, entitled "Grinding Apparatus", by Youden, et al., corresponding to U.S. patent Number 5,220,749, issued June 22, 1993. Licenses shall comply with 35 U.S.C. 209 and 27 CFR part 404.

The Government is willing to pursue patents in foreign countries under the PCT application, subject to negotiation with potential licensees to assume the costs of such formal foreign patent prosecutions.

**DATES:** Written objections must be filed on or before August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** U.S. Army Armament Research, Development and Engineering Center, ATTN: SMCAR–GCL, Mr. Edward Goldberg, Chief Patent Counsel, Pictinny Arsenal, NJ 07806–5000; Tel: 201–724–6590 or DSN 880–6590.

**SUPPLEMENTARY INFORMATION:** Department of the Army, U.S. Army Armament Research, Development and Engineering Center; Availability of Non-exclusive, Exclusive, or Partially

Exclusive licensing of a foreign (non-U.S.) patent application filed by the U.S. Army worldwide under the Patent Cooperating Treaty (except for the U.S.) as described above. The subject matter of the patent application relates to a machine for automated, one-step, precision grinding of optical lenses.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–15771 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–08–M

## Corps of Engineers

### Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Mississippi Delta, Mississippi, Flood Control Study

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

**ACTION:** Notice of intent.

**SUMMARY:** The proposed action is to provide a combination of channel enlargement, maintenance dredging, and/or clearing and snagging in the Big Sunflower River, Etc., Project area, including all or portions of the Big Sunflower River, Bogue Phalia, Quiver River, and any other tributaries as necessary to alleviate chronic flooding problems.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Barry, Corps of Engineers, Vicksburg District, ATTN: CELMK–PD–Q, 2101 North Frontage Road, Vicksburg, Mississippi 39180–5191; Tel: 601–631–5425.

**SUPPLEMENTARY INFORMATION:**

1. *Proposed Action:* The proposed action would provide flood damage protection to rural residences and agricultural properties throughout the Big Sunflower River Basin. The SEIS will supplement the Final EIS "Flood Control, Mississippi River and Tributaries, Yazoo River Basin, Mississippi," filed with the Council on Environmental Quality on 29 December 1975. Prior work in the Basin was authorized by the Flood Control Act of 22 December 1944. This authorization provided for channel improvement for flood control on the Big Sunflower River, Little Sunflower River, Quiver River, Hushpuckena River, and their major tributaries, Bogue Phalia, Steele Bayou, Main Canal, and several smaller streams in the Basin.

2. *Alternatives:* Alternatives to be evaluated include no action and various channel enlargement plans. Local protection for communities will be evaluated as necessary.

3. a. Scoping meetings will be held in the project vicinity during the September/October 1993 timeframe. Public notices to be published later will inform the general public of the locations, times, and dates.

b. Significant issues include bottomland hardwoods, wetlands, endangered species, waterfowl, fish, water quality, cultural resources, socioeconomic conditions, etc. Additional environmental review and consultation requirements could be identified during the scoping process.

c. The Environmental Protection Agency, U.S. Fish and Wildlife Service, Soil Conservation Service, U.S. Forest Service, Mississippi Department of Environmental Quality, and the Mississippi Department of Wildlife, Fisheries and Parks will be invited to participate as cooperating agencies.

4. A draft Feasibility Report, including the draft Supplemental EIS, will be available for review by the general public in 1988.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–15770 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–PU–M

### Open Meeting, Inland Waterways Users Board

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

**ACTION:** Notice.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, announcement is made of the following committee meeting:

*Name of Committee:* Inland Waterways Users Board.

*Date of Meeting:* 27 July 1993.

*Place:* Washington Court Hotel, 525 New Jersey Ave., NW., (Tel. 202–628–2100).

*Time:* 8:30 a.m. to 5 p.m.

*Proposed Agenda:*

AM Session

8:30 Registration
9:05 Welcoming Remarks and Introductions
—Administration Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes
9:30 Status of Inland Waterways Trust Fund
10 Focused Discussion:
a. Proposed Increase in Diesel Fuel Tax
b. U.S. Senate's Proposed Transportation Fuel Tax
10:45 Break
11 Lunch

PM Session

1:30 Status of Major Rehabilitation Program for FY 95 and FY 95.
2:30 Users Board Update: Rehabilitation Recommendation for Fall Meeting
3 Break
3:30 Projects Update: Industrial Canal Lock
4 Public Comment Period
5 Instructions to Board Staff/Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000, Tel. 202–272–1783.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–15768 Filed 7–2–93; 8:45 am]

BILLING CODE 3710–92–M

## Department of the Navy

### Government-owned Inventions; Availability for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

**DATES:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,018,114: Adjustable Frequency Diversity Acoustic Communications System; filed 13 December 1988; patented 21 May 1991.

Patent 5,068,596: Internal Grounding Arrangement in a switching power converter; filed 20 August 1990; patented 26 November 1991.

Patent 5,085,548: Nut and Snap Ring Position Locking Device; filed 30 April 1991; patented 4 February 1992.

Patent 5,100,353: Electromagnetic Marker Float Release; filed 15 October 1990; patented 31 March 1992.

Patent 5,123,616: High Efficiency, Low Weight and Volume Energy Absorbent Seam; filed 9 September 1991; patented 23 June 1992.

Patent 5,124,385: Polyurethane Self-priming Topcoats; filed 13 May 1991; patented 23 June 1992.

Patent 5,136,119: Lightweight Portable Emi Shielding Container; filed 18 September 1991; patented 4 August 1992.

Patent 5,147,567: Synthetic Lubricating Oil Greases Containing Metal Chelates of Schiff Bases; filed 9 April 1991; patented 15 September 1992.

Patent 5,155,741: High Data Rate Communications System Using Long Pulses; filed 31 January 1991; patented 13 October 1992.

Patent 5,156,806: Metal Alloy and Method of Preparation Thereof; filed 5 May 1975; patented 20 October 1992.

Patent 5,157,695: Variable Pulse Rate Circuit; filed 28 January 1988; patented 20 October 1992.

Patent 5,160,468: Method for Preparing a Storage Container for Explosive Rounds; filed 28 February 1992; patented 3 November 1992.

Patent 5,160,800: Obturator Retaining Means; filed 24 April 1991; patented 3 November 1992.

Patent 5,160,802: Prestressed Composite Gun Tube; filed 24 September 1975; patented 3 November 1992.

Patent 5,160,934: Cross Switched Micrad Seeker; filed 27 August 1985; patented 3 November 1992.

Patent 5,161,125: Radiation Selective System for Target Range and Imaging Readout; filed 5 May 1992; patented 10 November 1992.

Patent 5,161,449: Pneumatic Actuator With Hydraulic Control; filed 24 June 1991; patented 10 November 1992.

Patent 5,162,235: Method and Apparatus for Assessing Distillate Fuel Stability by Oxygen Overpressure; filed 27 June 1989; patented 10 November 1992.

Patent 5,162,274: Regeneration of Whetherite for Absorbing Toxic Pollutants From Air; filed 13 December 1990; patented 10 November 1992.

Patent 5,162,453: Dye Substituted Polymers Containing Hydrophobically Terminated Stilbazolium Radicals; filed 29 November 1990; patented 10 November 1992.

Patent 5,162,470: Polymers With Electrical and Nonlinear Optical Properties; filed 9 April 1991; patented 10 November 1992.

Patent 5,162,741: Temperature Compensated Lithium Battery Energy Monitor; filed 10 December 1990; patented 10 November 1992.

Patent 5,162,802: Method and Apparatus for Tracking Using an Efficient Gating Scheme; filed 1 May 1991; patented 10 November 1992.

Patent 5,162,805: Frequency Diversity Sidelobe Canceller; filed 19 January 1975; patented 10 November 1992.

Patent 5,163,061: Method of Frequency Shifting Using a Chromium Doped Laser Transmitter; filed 7 October 1991; patented 10 November 1992.

Patent 5,163,062: Method of Frequency Shifting Using a Chromium Doped Laser Transmitter; filed 16 October 1991; patented 10 November 1992.

Patent 5,164,324: Laser Texturing; filed 26 September 1990; patented 17 November 1992.

Patent 5,164,524: Process for Preparation of Tetra (Organyl) Telluride Compounds; filed 10 October 1991; patented 17 November 1992.

Patent 5,164,736: Optical Antenna Beam Steering Using Digital Phase Shifter Control; filed 11 March 1992; patented 17 November 1992.

Patent 5,165,087: Crosstie Random Access Memory Element Having Associated Read/Write Circuitry; filed 19 November 1990; patented 17 November 1992.

Patent 5,165,360: Underwater Rapid-Fire Ram Pump; filed 11 March 1991; patented 24 November 1992.

Patent 5,166,882: System for Calibrating a Gyro Navigator; filed 31 March 1989; patented 24 November 1992.

Patent 5,166,988: Thermal Phase Modulation and Method of Modulation of Light Beams by Optical Means; filed 31 October 1991; patented 24 November 1992.

Patent 5,168,359: Video Scan Rate Converter Method and Apparatus for Achieving Same; filed 1 August 1991; patented 1 December 1992.

Patent 5,168,472: Dual-Frequency Receiving Array Using Randomized Element Positions; filed 13 November 1991; patented 1 December 1992.

Patent 5,168,760: Magnetic Multilayer Strain Gage; filed 1 November 1991; patented 18 December 1992.

Patent 5,169,197: Lift Link for Helicopter External Lift of Dual HUMWV'S; filed 28 January 1991; patented 18 December 1992.

Patent 5,169,676: Control of Crystallite Size in Diamond Film Chemical Vapor Deposition; filed 16 May 1991; patented 18 December 1992.

Patent 5,171,608: Method of Pattern Transfer in Photolighography Using Laser; filed 28 September 1990; patented 15 December 1992.

Patent 5,171,790: Elastomer Blend for Sound and Vibration Dampening; filed 23 November 1990; patented 15 December 1992.

Patent 5,172,323: Apparatus for Determining the Attitude of a Vehicle; filed 6 December 1991; patented 15 December 1992.

Patent 5,174,983: Diamond Synthesis Turbulent Flames & Plasmas; filed 24 September 1990; patented 15 December 1992.

Patent 5,175,694: Centroid Target Tracking System Utilizing Parallel Processing of Digital Data Patterns; filed 8 February 1990; patented 29 December 1992.

Patent 5,176,342: Goggle Emergency Release Apparatus; filed 30 December 1991; patented 5 January 1993.

Patent 5,176,788: Method of Joining Diamond Structures; filed 8 July 1991; patented 5 January 1993.

Patent 5,177,816: Helmet Visor Support Apparatus; filed 10 December 1991; patented 12 January 1993.

Patent 5,181,212: Method of Emitting on a Specific Wavelength Fraunhofer Line Using a Neodymium Doped Laser Transmitter; filed 31 December 1991; patented 19 January 1993.

Patent 5,182,418: Aimable Warhead; filed 21 June 1965; patented 26 January 1993.

Patent 5,182,456: Noise Attenuating Circuit for Mechanical Relay Including Optical Isolation; filed 25 February 1992; patented 26 January 1993.

Patent 5,183,217: Cable Pack Winding and Payout System; filed 31 March 1992; patented 2 February 1993.

Patent 5,184,407: Combination Tool and Tape for Measuring Circumference of Flexible Tubing; filed 11 June 1992; patented 9 February 1993.

Patent 5,185,945: Universal Protective Shield for the Foot; filed 10 July 1992; patented 16 February 1993.

Patent 5,186,414: Hybrid Data Link; filed 20 April 1992; patented 16 February 1993.

Patent 5,186,420: Articulated Fin/Wing Control System; filed 8 November 1991; patented 16 February 1993.

Patent 5,187,690: Acoustic Transducer System; filed 28 May 1992; patented 16 February 1993.

Patent 5,196,653: Muffler for Air Powered Turbine Drive; filed 20 May 1991; patented 23 February 1993.

Patent 5,198,609: Auxiliary Target Area Chaff Container; filed 27 april 1992; patented 30 March 1993.

Patent 5,200,972: ND Laser With Co-Doped Ion(s) Pumped by Visible Laser Diodes; filed 17 June 1991; patented 6 April 1993.

Patent 5,202,783: Secure and Programmable Friendly Target Recognition System; filed 21 June 1991; patented 13 April 1992.

Patent Application 862,709: Gas/Liquid Separator; filed 3 April 1992.

Patent Application 862,689: Combined Centrifugal Force/Gravity Gas/Liquid Separator System; filed 3 April 1992.

Patent Application 866,921: Wire Assembly for Electronically Conductive Circuits; filed 10 April 1992.

Patent Application 874,156: RF Immune 20 mm Electric Primer Method; filed 27 April 1992.

Patent Application 880,789: Pseudoperiodic Driving and Synchronization of Multiperiodic Systems; filed 11 May 1992.

Patent Application 882,226: Lithographic Mask and Method for Fabrication Thereof; filed 15 May 1992.

Patent Application 882,722: Embedded Can Booster; filed 14 May 1992.

Patent Application 883,336: Resonantly Pumped, Erbium-Doped, GSSG, 2.8 Micron, Solid State Laser With Energy Recycling and High Slope Efficiency; filed 14 May 1992.

Patent Application 892,063: An Acoustic Transducer System; filed 28 May 1992.

Patent Application 892,067: Reconfigurable Heavy-Duty Battery Holder; filed 22 May 1992.

Patent Application 896,079: Method and Apparatus for Evaluating the Optical Spatial Response Characteristics of Objects, filed 8 June 1992.

Patent Application 896,633: Armored Fiber Optic Cables; filed 10 June 1992.

Patent Application 897,638: Nanochannel Glass, filed 12 June 1992.

Patent Application 899,803: Two Stage Target Tracking System and Method, filed 17 June 1992.

Patent Application 901,286: Fixture for Pressure Testing Sight Glasses; filed 19 June 1992.

Patent Application 901,620: N,N'–BIS (4,4,4-Trinitrobutyryl) Hydrazine, filed 19 June 1992.

Patent Application 901,621: 2-Polynitroalkyl-5-Perfluoroakkyl-1,3,4-Oxadiazoles, filed 19 June 1992.

Patent Application 901,623: N-(2-Hydroxyethyl nitrate)-2,4,6-Trinitrobenzamine; filed 19 June 1992.

Patent Application 902,749: Surface Modification of Elastomers; filed 23 June 1992.

Patent Application 903,218: Dual Waveband Processing System, filed 23 June 1992.

Patent Application 903,293: VLF–VHF Broadband In-Line Amplifier for Submarine Antennas; filed 24 June 1992.

Patent Application 903,316: Layered Parallel Interface for an Active Antenna Array; filed 24 June 1992.

Patent Application 903,390: Method and Apparatus for Correlating Object Measurements with Object Measurement Estimates; filed 24 June 1992.

Patent Application 904,095: Apparatus for Pressurizing a Submarine Launch Tube; filed 25 June 1992.

Patent Application 904,096: Spirobislactone Acrylate Polymers; filed 25 June 1992.

Patent Application 904,626: Device for Generating Acoustic Signals; filed 26 June 1992.

Patent Application 904,630: All Hydraulic Torpedo Tube Control System; filed 26 June 1992.

Patent Application 905,702: Method and Device for the In Situ Repair of Damaged Threads; filed 29 June 1992.

Patent Application 905,705: Variable Wideband Fiber Optic Delay Line; filed 29 June 1992.

Patent Application 905,949: Adjacent Code System; filed 29 June 1992.

Patent Application 910,053: Sonobuoy for Forming Virtual Vertical Sensing Arrays; filed 8 July 1992.

Patent Application 912,954: Self-Actuating Slide Valve System; filed 8 July 1992.

Patent Application 914,668: Composite Reinforced Gun Barrels, filed 17 July 1992.

Patent Application 915,569: Method of Producing High Temperature Superconductor Wires; filed 20 July 1992.

Patent Application 916,758: Inflatable Undersea Vehicle System of Special Utility as a Daughter Vessel to a Mother Vessel, filed 22 July 1992.

Patent Application 918,085: Antenna Erector for a Towed Buoyant Cable, filed 24 July 1992.

Patent Application 918,086: High Torque Capable, Self Locking, Vibration Isolating Flexible Shaft Coupling; filed 24 July 1992.

Patent Application 926,112: Power Conversion System Modification to Permit Use of DC Power Source; filed 7 August 1992.

Patent Application 929,215: Statistically Calibrated Transducer, filed 13 August 1992.

Patent Application 937,098: Optical Pattern Recognition System Utilizing Resonator Array, filed 31 August 1992.

Patent Application 944,602: Non-Contacting Capacitance Probe for Dielectric Cure Monitoring; filed 14 September 1992.

Patent Application 950,558: Oriented, Single-Phase, Thin Films of Potassium Tantalate-Niobate; filed 25 September 1992.

Patent Application 953,380: Variable Phase Sine Wave Generator for Active Phased Arrays; filed 30 September 1992.

Patent Application 953,621: Transducer Structure; filed 30 September 1992.

Patent Application 953,908: High Temperature Substrate Mount for Chemical Vapor Deposition of Diamond; filed 30 September 1992.

Dated: June 23, 1993.

**Michael, P. Rummel,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93–15762 Filed 7–2–93; 8:45 am]

BILLING CODE 3810–AE–M

## Government-Owned Invention; Availability for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of availability of invention for licensing.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Requests for copies of patent application cited should be directed to the Office of Naval Research (Code 1230), Ballston Tower 1, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

**DATES:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 07/988,605 entitled Method and Apparatus for Enhancing Computer-User Selection of Computer-Displayed Objects Through Dynamic Selection Area and Constant Visual Feedback, invented by Glenn A. Osga.

Dated: June 23, 1993.

**Michael P. Rummel,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93–15791 Filed 7–2–93; 8:45 am]

BILLING CODE 3810–AE–M

## The San'Doil Co.; Intent to Grant Exclusive Patent Service

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Intent to Grant Exclusive Patent License; The San'Doil Company.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to The San'Doil Company a revocable, nonassignable, exclusive license in the

United States to practice the Government-owned inventions described in U.S. Patents No. 5,130,251 entitled "Stress-Resistant Bioluminescent Dinoflagellates"; 5,143,545 entitled "Antifouling Marine Coatings"; and 5,192,667 entitled "Method for Evaluating Anti-Fouling Paints".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230, Ballston Tower One, Arlington, Virginia 22217–5660.

**DATES:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 24, 1993.

**Michael P. Rummel,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93–15766 Filed 7–2–93; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF ENERGY

### Notice of Floodplain and Wetlands Involvement for the Middlesex Sampling Plant, Middlesex, New Jersey and Maywood Interim Storage Site, Bergen County New Jersey

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of Floodplain and Wetlands Involvement.

**SUMMARY:** DOE proposes to conduct a removal action in accordance with Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at the Middlesex Sampling Plant, New Jersey, to remediate radioactively contaminated sediment from areas within a drainage ditch located adjacent to the site. Excavation of the radiologically contaminated sediment from the drainage ditch has been determined to involve work in a floodplain and freshwater wetlands. The action is necessary to remove contaminated sediment that exceeds current DOE criteria for residual radioactivity in soil and would result in storage of the contaminated sediment of the Middlesex Sampling Plant. The Middlesex Sampling Plant is located in the Borough of Middlesex in Middlesex County, New Jersey.

DOE is in the process of proposing options for the remediation of radiological contamination at the Maywood Interim Storage Site, New Jersey, and certain vicinity properties as part of the Remedial Investigation/ Feasibility Study-Environmental Impact Statement (RI/FS–EIS) currently underway for the site. Possible remediation options being examined for the Maywood Interim Storage Site and vicinity properties include the construction of a new land encapsulated facility for the storage of radiologically contaminated soil, the excavation and removal of the radiologically contained soil to off-site disposal facilities, and maintenance of the site in its current state with no further remedial action. The Maywood Interim Storage Site and certain vicinity properties have been determined to be partially located in a floodplain and freshwater wetlands. The selection and implementation of a potential preferred remediation option may affect a floodplain or wetlands. The Maywood Interim Storage Site and vicinity properties are on the Environmental Protection Agency's National Priorities List. The properties are located in the Boroughs of Maywood and Lodi and the Township of Rochelle Park in Bergen County, New Jersey.

For each action, in accordance with 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform the proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

**DATES:** Comments are due to the address below no later than July 21, 1993.

**ADDRESSES:** Comments should be addressed to Mr. William M. Seay, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee 37831–8723.

For further information on these proposed actions, contact:

Ms. Susan M. Cange, Site Manager, Former Sites Restoration Division, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee, 37831–8723, Phone: (615) 576–5724, Fax: (615) 576–0956.

For further information on general DOE Floodplain/Wetlands environmental review requirements, Contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain and wetland assessment for each of these proposed actions. DOE floodplain and wetlands assessment and statement of findings (SOF) for these proposed activities will be available for review in the following documents.

The floodplain and wetlands assessment for the Middlesex Sampling Plant will be included in the engineering evaluation/cost analysis-environmental assessment (EE/CA–EA) being prepared for the Middlesex Sampling Plant in accordance with CERCLA and the National Environmental Policy Act (NEPA). The SOF will be included in the EE/CA–EA being prepared for the Middlesex Sampling Plant in accordance with CERCLA and NEPA or published separately.

The floodplain and wetlands assessment for the Maywood Interim Storage Site and vicinity properties will be included in the RI/FS–EIS being prepared for the Maywood Interim Storage Site in Accordance with CERCLA and NEPA. The SOF will be included in the RI/FS–EIS being prepared for the Maywood Interim Storage Site in accordance with CERCLA and NEPA.

Issued at Washington, DC., June 29, 1993.

**Thomas P. Grumbly,**

*Assistant Secretary for Environmental Restoration and Waste Management.*

[FR Doc. 93–15886 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–M

### Financial Assistance Award; Intent to Award Cooperative Agreement to National Governors' Association

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of Non-Competitive Financial Assistance Award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the National Governors' Association (NGA) under Cooperative Agreement Number DE–FC01–93EW30226. Estimated total funding in the amount of $2,596,429 will be provided to resolve the problem of treating and disposing of millions of gallons of mixed radioactive and hazardous waste currently stored at DOE sites in states where DOE has mixed waste facilities.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(D) that the National

Governors' Association has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

The proposed effort is to influence the shaping and implementation of national policy and to use creative leadership to solve state problems. The NGA's operations are supported by member jurisdictions, and its policies and programs are formulated by the Governors. The association develops policy positions and discusses common practices and experiences. The positions provide the policy base for the association's legislative and information efforts. The NGA membership is organized into seven standing committees in major substantive areas: agriculture and rural development; economic development and technology innovation; energy and environment; human resources; international trade and foreign relations; justice and public safety; and transportation, commerce, and communications. NGA's ongoing mission is to provide a bipartisan forum to support the work of the Governors, to help shape and implement national policy, and to solve state problems. No other organization supports a similar mission, or provides an equivalent forum for the nation's Governors.

NGA is the only organization that collectively represents all of the nation's Governors on matters of national and state policy, as identified through the Association. NGA's unique institutional ties to the state governments included in this project are required because of the need to balance individual state interests with national perspectives in development of DOE's mixed waste treatment plans. This organization's ability to access and mobilize its member governments on multi-state task forces and committees is needed to provide assessment of key issues identified in the Federal Facility Compliance Act and facilitate issue resolution. The NGA's Center of Policy Research has substantial expertise in federal and state environmental programs and hosting forums for identifying and resolving critical policy and implementation issues.

The period of performance is 36 months from the date of award.

**FOR FURTHER INFORMATION CONTACT:**

U.S. Department of Energy, Office of Placement and Administration, Attn: Phyllis Morgan, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**Scott Sheffield,**

*Director, Division "B", Office of Placement and Administration.*

[FR Doc. 93–15887 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

**[Docket No. RM93–18–000]**

## Accounting And Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992; Notice Providing Accounting Guidance

June 23, 1993.

### I. Introduction

Title XI of the Energy Policy Act [1] amends the Atomic Energy Act of 1954 [2] to, among other things, create a fund to be used for the decommissioning and decontamination of the Department of Energy's (DOE) gaseous diffusion uranium enrichment facilities. This new fund will be financed in part through special assessments which DOE is required to collect from certain domestic utilities pursuant to the Atomic Energy Act of 1954, as amended (Atomic Energy Act). Utilities will have no discretion concerning the payment of special assessments.

The Secretary of the DOE will issue special assessments in the near future. Consequently, the Federal Energy Regulatory Commission (Commission) believes that it is necessary to provide guidance as soon as practicable to utilities concerning the accounting treatment to be used for costs incurred for special assessments prior to the collection of the assessments by the Secretary of the DOE. In addition, the Commission believes it is important to provide guidance as well as to the ratemaking treatment for special assessments. Accordingly, in a document published elsewhere in this edition of the **Federal Register**, the Commission is now proposing to amend part 35 of title 18, chapter I of the Code of Federal Regulations to provide a method for public utilities to recover through jurisdictional rates the costs for special assessments levied under the Atomic Energy Act.

The Commission is also specifying the method that public utilities should use to account for special assessments pursuant to the Commission's Uniform Systems of Accounts (USofA).[3]

### II. Discussion

#### *A. The Uranium Enrichment Decontamination and Decommissioning Fund*

Section 1801(a) of the Atomic Energy Act provides for the establishment of the Uranium Enrichment Decontamination and Decommissioning Fund (Fund). The Fund will be used to pay for decontamination, decommissioning, reclamation and other remedial activities at the DOE's gaseous diffusion uranium enrichment facilities. Section 1802(a) provides that the Fund will be financed through deposits in the amount of $480 million per fiscal year (adjusted annually for inflation).

Section 1802(c) provides that the annual deposit to the Fund will be financed partly through the collection by the DOE of a special assessment on domestic utilities. The special assessment will be based on the separative work units (a separative work unit is a measurement of energy and is the unit by which uranium enrichment services are sold) purchased by domestic utilities for the purpose of commercial electricity generation prior to October 24, 1992.

Section 1802(c) provides that the amount collected through special assessments by the DOE will not exceed $150 million per fiscal year (adjusted annually for inflation). Section 1802(d) provides that the collection of special assessments will cease at the earlier of October 24, 2007, or when $2.25 billion (adjusted annually for inflation) has been collected.

Section 1802(g) provides that special assessments shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as a utility's other fuel cost.

#### *B. Accounting Treatment*

The imposition of a special assessment that will be levied on domestic utilities and which is based upon the separative work units purchased by the utilities from DOE prior to October 24, 1992 for the purpose of commercial electricity generation has effectively caused a liability [4] to exist for all affected utilities.

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[1] See Public Law 102–486, title XI, 106 Stat. 2776, 2954 (1992).

[2] 42 U.S.C. 2011 *et seq.*

[3] 18 CFR part 101.

[4] Liabilities are probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of

Continued

Sound accounting practice requires the entire liability for special assessments to be reflected in financial statements currently. Although the special assessment for domestic utilities is limited to $150 million per fiscal year (adjusted annually for inflation) there is an obligation for the utilities to make payments for 15 years after the date of enactment or until $2.25 billion has been collected (also to be adjusted for inflation), whichever comes first. The total obligation is not contingent upon future operations and payments must continue even if the domestic utility no longer operates nuclear units during the time period when special assessments are levied. Further, with the potential exception of future increases for inflation, each utility's liability for special assessments is sufficiently known and measurable to be recognized in current financial statements.

In order to obtain uniform accounting treatment of special assessments, all affected public utilities shall record the non-current portion of the entire liability in Account 224, Other Long-Term Debt, and the current portion of the liability[5] in Account 242, Miscellaneous Current and Accrued Liabilities.[6]

If it is probable that the costs associated with the liability will be included in the development of rates that the public utility is authorized to charge for utility service in future periods, a regulatory asset shall be recorded in Account 182.3, Other Regulatory Assets, for such probable future revenues. The recorded liability and regulatory asset should be adjusted in future years to the extent that adjustments, if any, for inflation or other reasons become known and measurable.

The amount recorded in Account 182.3 shall be charged to Account 518, Nuclear Fuel Expense, concurrently with the recovery of the amounts through rates.[7] Disallowance of rate recovery of all or part of the amount recorded in Account 182.3 shall be accounted for in accordance with the requirements set forth in Order No. 552, issued by the Commission on March 31, 1993.[8]

*C. Ratemaking Treatment*

Discussion of the ratemaking treatment and other matters relating to the notice of proposed rulemaking[9] are in a separate document published elsewhere in this edition of the **Federal Register.**

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–15853 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

past transactions of events. See the Financial Accounting Standards Board's Statement of Concepts No. 6, Elements of Financial Statements, issued December 1985; Volume 2 FASB Original Pronouncements, June 1, 1992.

[5] The initial liability to be recorded shall not contain any estimate of future inflation. Ideally, the liability should be estimated by predicting actual cash flows (which will include future inflation) and then discounting such cash flows to present value through use of an appropriate interest rate (such as the utility's incremental borrowing rate). However, in view of the speculative nature of estimates for future inflation rates and the fact that a sizable portion of the discount rate would be made up of an anticipated inflation rate as well, the Commission does not believe that financial reporting would be appreciably improved through such an exercise in this particular instance.

[6] The Special Instructions for Current and Accrued Liabilities contained in the Commission's USofA, provides, in part, that:

Current and accrued liabilities are those obligations which have either matured or which become due within one year from the date thereof.

18 CFR part 101, text following Account 226.

[7] Public utilities should separately identify in the notes provided at page 122 of Form 1 and pages 12–13 of Form 1–F the following: (1) Any expense associated with special assessments as recorded in Account 518 during the reporting year; (2) any payment associated with special assessments that is made during the reporting year; and (3) any refund of a special assessment that is received during the reporting year from the federal government because a public utility has contested a special assessment or overpaid a special assessment.

[8] See Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A, Order No. 552, 58 FR 17982 (April 7, 1993), III FERC Statutes and Regulations ¶ 30,967 (1993).

[9] Regulatory Flexibility Act, Environmental Statement, Information Collection Statement, Public Comment Procedures, and the text of the proposed rule.

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[Docket No. ER93–496–000]

## Northern Electric Power Co., L.P.; Issuance of Order

June 29, 1993.

On March 26, 1993, Northern Electric Power Company, L.P. (Northern Electric) submitted for filing with the Commission an agreement and an amendment for the sale of electric power and energy produced by the Hudson Falls Hydroelectric Project to Niagara Mohawk Power Corporation. On May 25, 1993, Northern Electric filed a second amendment to the agreement revising Northern Electric's rates to reflect the state approved avoided cost. Northern Electric also requested waiver of various Commission regulations. In particular, Northern Electric also requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Northern Electric.

On June 18, 1993, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted the requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Northern Electric 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).

Absent a request for hearing within this period, Northern Electric is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; *provided that* said issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of Northern Electric's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 19, 1993.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE. Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–15793 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP91–229–000]

## Panhandle Eastern Pipe Line Co., Notice of Informal Settlement Conference

June 29, 1993.

Take notice that an informal settlement conference will be convened in this proceeding beginning Wednesday, July 7, 1993, at 1 p.m., and continuing through Thursday, July 8, 1993 at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible

settlement of the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–15796 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–507–000]**

## Sonat Marketing Co., Notice of Application

June 29, 1993.

Take notice that on June 22, 1993, Sonat Marketing Company (Sonat Marketing), 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed in Docket No. CP93–507–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited jurisdiction certificate of public convenience and necessity authorizing to operate leased underground storage capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Sonat Marketing proposes to lease storage capacity from United States Gas Storage Company (Storage Company) in the Barnsley Storage Field, Hopkins County, Kentucky. Sonat Marketing states that it would use the leased storage capacity to balance its gas supply, enhance it operational capabilities and enable it to provide more flexible sales service to potential customers.

Sonat Marketing asserts that the present operation of the storage field is nonjurisdictional and that it would not provide any storage or transportation service to third parties, but would use the storage capacity only for its own sales and supply functions. Sonat Marketing requests that if the Commission concludes that its use of the leased storage capacity is nonjurisdictional its application be dismissed.

Any person desiring to be heard or to make any protests with reference to said application should on or before July 20, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission's or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Sonat Marketing to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–15795 Filed 7–2–93; 8:45 am]

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**[Docket No. CP93–515–000]**

## Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

June 29, 1993.

Take notice that on June 25, 1993, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP93–515–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery to Montana-Dakota Utilities Company (MDU), under the blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to Section 7(c) 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.

Williston seeks authorization to construct and operate a new delivery tap, metering station and appurtenant facilities in Jackson County, Wyoming for use in providing firm sales service to MDU, an existing local distribution company sales customer, under Rate Schedule G–1. It is indicated that the proposed tap would be used to effect deliveries to MDU to supply one commercial and two residential customers in the Lake DeSmet Resort Area, between Buffalo and Sheridan Wyoming. Williston estimates a maximum daily quantity of 4 Mcf and an annual sales entitlement quantity of 500 Mcf, both of which, Williston contends, are within MDU's existing certificated sales entitlements. Williston also indicates that the installation of the proposed facilities would have no significant effect on Williston's peak day or annual requirements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–15794 Filed 7–2–93; 8:45 am]

BILLING CODE 6717–01–M

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## Office of Hearings and Appeals

### List of Cases for the Week of June 4 through June 11, 1993

During the Week of June 4 through June 11, 1993, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the

procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 29, 1993.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 4 through June 11, 1993]

| Date | Name and Location of Applicant | Case No. | Type of Submission |
|---|---|---|---|
| Jun. 7, 1993 .... | Estate of John S. Hyatt, Knoxville, TN ..... | LFA–0302 | Appeal of an Information Request Denial. *If Granted:* The May 26, 1993 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and the Estate of John S. Hyatt would receive access to all employment records concerning John S. Hyatt, including records concerning his exposure to radiation. |
| Jun. 8, 1993 .... | Marlene Flor, Arlington, VA ..... | LFA–0303 | Appeal of an Information Request Denial. *If Granted:* The May 6, 1993 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Marlene Flor would receive access to a contract between Albuquerque and the University of New Mexico. |
| Jun. 9, 1993 .... | Ronald Sorri, Albuquerque, NM ..... | LWA–0001 | Request for Hearing under DOE Contractor Employee Protection Program. *If Granted:* A hearing under 10 C.F.R. Part 708 would be held on the complaint of Ronald Sorri that reprisals were taken against him by management officials of L & M Technologies, Inc. and Sandia National Laboratories, a Management and Operating Contractor for the Department of Energy, as a consequence of his having disclosed safety concerns to L&M, Sandia and the DOE. |
| Jun. 10, 1993 .. | Arco/Coast Gas, Inc., Hardin, KY ..... | RR304–63 | Request for Modification/Rescission in the Arco Refund Proceeding. *If Granted:* The May 6, 1993 Dismissal Letter (Case No. RF304–8885) issued to Coast Gas, Inc. would be modified regarding the firm's application for refund in the Arco refund proceeding. |
| Mar. 19, 1992 .. | Texaco/Bridgeport Texaco, Tacoma, WA ... | RR321–131 | Request for Modification/Rescission in the Texaco Refund Proceeding. *If Granted:* The March 10, 1992 Decision and Order (Case No. RF321–12) issued to Bridgeport Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding. |

## REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/name of refund application | Case No. |
|---|---|---|
| 6/4/93 thru 6/11/93 | Atlantic Richfield Applications Received | RF304–14059 thru RF304–14093 |
| 6/4/93 thru 6/11/93 | Crude Oil Refund Applications Received | RF272–94735 thru RF272–94748 |
| 6/7/93 | Gasway Petroleum Corp | RF349–2 |
| 6/8/93 | First Paratransit Corp | RC272–203 |
| 6/8/93 | Hanks Service Station | RF321–19767 |
| 6/8/93 | Brunson Texaco | RF321–19768 |
| 6/8/93 | Stephen Robertson | RF238–92 |
| 6/8/93 | Holmes Transportation Corp. | RF321–19769 |
| 6/8/93 | W.R. Meadows of Georgia | RF351–1 |
| 6/9/93 | Defense Fuel Supply Center | RF347–6 |
| 6/10/93 | K & R Delivery Inc | RC272–204 |

[FR Doc. 93–15888 Filed 7–2–93; 8:45 am]
BILLING CODE 6450–01–P

## Office of Hearings and Appeals

### Issurance of Decisions and Orders for the Week of April 12 through April 16, 1993

During the week of April 12 through April 16, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for 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.

**Appeal**

*Eugene Maples, 4/12/93, LFA–0276*

Eugene Maples filed an Appeal from a denial of his request for a fee waiver by the DOE's Freedom of Information and Privacy Branch (the FOIPB). In considering the Appeal, the DOE found that the FOIPB determinations that Maples lacked the ability to analyze the disclosed information and the means to disseminate the information to the public were incorrect under the Freedom of Information Act. The appeal was therefore granted and the matter remanded for further consideration.

**Implementation of Special Refund Procedures**

*Permain Corp., 4/15/93, LEF–0035*

The DOE issued a Decision and Order implementing procedures for the disbursement of $10,953,665, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with the Permian Corporation (Permian) on June 25, 1982. The DOE determined that the Permian funds should be distributed pursuant to Subpart V. The DOE also determined that $810,571 of the consent order fund should be set aside for refunds to customers that purchased Permian refined products during the August 19, 1973 through January 27, 1981 consent order period. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C.A. 4501–07 (West Supp. 1989). Purchasers of regulated petroleum products from Permian during the consent order period may file Applications for Refund from the Permian consent order fund. Applications for Refund from the Permian refined product pool must be postmarked by May 2, 1994. Applications for crude oil refunds must be received by June 30, 1994. Instructions for the completion of refund applications are set forth in the Decision.

*Richome Oil and Gas Co., Et al. and Ball Marketing, Inc., Et al., 4/16/93, LEF–0041 and LEF–0043*

The DOE issued a Decision and Order implementing procedures for the distribution of $30,343, plus accrued interest, in alleged overcharges obtained from Richome Oil and Gas Company, Herrmann Energy, Jerome B. Herrmann, Richard P. Herrmann, Kevin Herrmann, and Stanley Herrmann (Case No. LEF–0041) (Richome) and $798,714.49, plus accrued interest, in alleged overcharges from Ball Marketing Inc., Charles Goss, Baker R. Littlefield and Robert L. McAdams (Case No. LEF–0043) (Ball). These funds were remitted by Richome and Ball to the DOE to settle possible pricing violations with respect to sales of crude oil. The DOE determined that these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Under that policy, crude oil overcharge monies are divided among the states (40%), federal government (40%), and injured purchasers of refined products (20%). Accordingly, Applications for Refund will be accepted from any party who purchased controlled refined petroleum products during the period of price controls. The specific information to be included in applications for crude oil refunds, which must be submitted by June 30, 1994, is included in the Decision. Any party who has previously filed an Application for Refund in the crude oil proceedings will be deemed to have filed an application in these proceedings.

**Refund Applications**

*Gulf Oil Corp./Fort Bend County Precinct, 4/12/93, RF300–21732*

The DOE has issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application, which was postmarked March 17, 1993, was filed directly by the applicant after the Gulf proceeding deadline of March 1, 1993. Accordingly, the Application for Refund was dismissed.

*Gulf Oil Corp./New Bedford Municipal Airport, 4/12/93, RF300–21722*

The DOE has issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application, which was postmarked March 9, 1993, was filed by the private filing service of Wilson, Keller & Associates, Inc. after the Gulf proceeding deadline of March 1, 1993. Accordingly, the Application for Refund was dismissed.

*Gulf Oil Corp./Piney Branch Gulf, 4/13/93, RF300–21727*

The DOE has issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application, which was dated March 9, 1993, was filed by the private filing service of Wilson, Keller & Associates, Inc. after the Gulf proceeding deadline of March 1, 1993. Accordingly, the Application for Refund was dismissed.

*Gulf Oil Corp./Wilcox Oil Co., Inc., 4/12/93, RF300–8768*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Wilcox Oil Co., Inc. In its Application for Refund, Wilcox Oil was claiming a refund based upon purchases of Gulf petroleum products made by a Gulf distributorship that Wilcox Oil purchased in 1982. The Application for Refund was denied because Wilcox Oil purchased only the assets of the distributorship, not its corporate stock, and the purchase agreement did not mention potential refunds as being one of the assets which was transferred in the sale.

*Gulf Oil Corp./Winston Bresett, New York Telephone, 4/13/93, RF300–21729 and RF300–21730*

The DOE has issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. These applications, which were both postmarked March 20, 1993, were filed by the private filing service of Resource Refunds, Inc. after the Gulf proceeding deadline of March 1, 1993. Accordingly, both Applications for Refund were dismissed.

*Oregon Department of Transportation Oregon Department of General Services, 4/15/93, RF272–64040 and RF272–67563*

The DOE issued a Decision and Order granting Applications for Refund filed by the Oregon Department of Transportation and the Oregon Department of General Services in the Subpart V crude oil refund proceeding. The Applications were based on purchases of refined petroleum products for transportation, heating, and road surfacing. The Applications did not

include purchases by counties, municipalities, or school districts. The total volume approved in the Decision and Order is 65,538,694 gallons and the total refund granted is $50,831.

*Texaco Inc./Perry North Main Texaco, 4/12/93, RF321–5954*

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Energy Refunds, Inc. (ERI) on behalf of Perry North Main Texaco. That application sought a refund based upon purchases of approximately 7,100,000 gallons of Texaco products during the entire March 1973 through January 1981 refund period. However, W.M. Perry, the owner of the outlet, had previously received a refund for the same station in the Gulf refund proceeding. The Gulf application was also filed through ERI and was for Gulf purchases made between March 1973 and mid-1980. Certain purchase schedules and other documents submitted in the Texaco proceeding were altered to change the name of the supplier from "Gulf" to "Texaco."

Based upon these considerations, the DOE found that the refund application was fraudulent. The DOE noted that because ERI filed both the Gulf and the Texaco applications, it could not claim to have innocently relied upon information supplied by the applicant. In any event, the DOE noted that representatives of applicants are responsible for the accuracy of the information that they file with DOE. Furthermore, the DOE found that ERI either knew or should have known of the alteration of documents submitted with the application. Accordingly, the DOE denied the refund application. In addition, the DOE directed both Mr. Perry and ERI to submit statements explaining their role in the fraudulent filing. The DOE suspended processing of all refund applications filed by ERI and stated that if a satisfactory explanation is not received from ERI, sanctions may be imposed.

*Texaco Inc./Reynolds Electrical & Engineering Co., Inc., 4/14/93, RF321–10738*

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund that was filed by Reynolds Electrical & Engineering Co., Inc. (Reynolds) in the Texaco special refund proceeding. The DOE found that Reynolds was not injured by Texaco's pricing practices because all of the applicant's Texaco purchases were made pursuant to a contract with the DOE under which Reynolds was reimbursed for all of its energy related expenditures.

**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.

| | | |
|---|---|---|
| A. K. Tone et al | RF272–91605 | 04/16/93 |
| Arlen & Eunice Rude | RC272–189 | 04/15/93 |
| Atlantic Richfield Company/Dayton Plaza Service Center | RF304–13761 | 04/16/93 |
| Atlantic Richfield Company/Zink's ARco et al | RF304–12920 | 04/14/93 |
| Carlisle School et al | RF272–90517 | 04/16/93 |
| Don Tribble et al | RF272–91508 | 04/14/93 |
| Duanesburg Central School et al | RF272–80007 | 04/15/93 |
| E.I. Dupont de Nemours & Co | RC272–191 | 04/14/93 |
| Enron Corp./Coastal States Trading, Inc | RF340–179 | 04/16/93 |
| Enron Corp./Kruegels, Inc | RF340–70 | 04/15/93 |
| Francis V. Macioce et al | RF272–91405 | 04/14/93 |
| Gulf Oil Corporation/Amherst Gulf Service Center et al | RF300–16533 | 04/12/93 |
| Gulf Oil Corporation/Anderson's Gulf et al | RF300–18159 | 04/15/93 |
| Gulf Oil Corporation/Gelco Corporation | RF300–17308 | 04/15/93 |
| McGeorge Contracting Co., Inc | RF272–14907 | 04/14/93 |
| Monfort of Colorado, Inc | RC272–186 | 04/13/93 |
| New Miami Local Sch. Dist. et al | RF272–80603 | 04/13/93 |
| Newport Yellow Cab Company | RC272–187 | 04/14/93 |
| Prophetstown-Lyndon C.U.S.D. 3 et al | RF272–87049 | 04/16/93 |
| Riddle School District # 70 et al | RF272–81251 | 04/12/93 |
| Smith-Sheppard Concrete Co | RC272–185 | 04/13/93 |
| Somerset School District et al | RF272–80301 | 04/15/93 |
| Texaco Inc./Bill Goetz Texaco | RF321–19691 | 04/13/93 |
| Texaco Inc./Branch Fuel Company et al | RF321–16900 | 04/16/93 |
| Texaco Inc./Cowboy Oil Company et al | RF321–15123 | 04/16/93 |
| Texaco Inc./Harland Hauck Oil Co | RF321–19690 | 04/14/93 |
| Texaco Inc./Lilburn Texaco | RR321–120 | 04/15/93 |
| Texaco Inc./Petroleum Marketers, Inc. et al | RF321–2746 | 04/15/93 |
| Texaco Inc./San German Service Station et al | RF321–10842 | 04/14/93 |
| Texaco Inc./West College Texaco et al | RF321–17925 | 04/16/93 |
| Town of Preston et al | RF272–91311 | 04/14/93 |
| Westside Cab Company | RC272–188 | 04/14/93 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Belgrade Elementary #44 | RF272–87761 |
| Best Products Co., Inc | RF304–9411 |
| Carl Di Michele | RF304–2025 |
| City of Moorestown | RF272–84047 |
| County of Hutchinson | RF272–91201 |
| Davenport & Son Texaco | RF321–18954 |
| De Foire & De Foire Enterprises. | RF300–16851 |
| Graffam's Service Station | RF300–16823 |
| Hackensack Water | RF300–16516 |
| Herring's Gulf | RF300–17525 |
| Hill Service Station | RF300–16739 |
| Jimbo's Self Service | RF300–16998 |
| John C. Volk | RF272–91857 |
| M.S.A.D. #15 | RF272–91178 |
| Marshall's Country Store | RF300–16959 |
| Melvin T. Hester | RF300–15148 |
| Nance's Gulf | RF300–16785 |
| New Mexico Transportation DRF272–89147. | |

| Name | Case No. |
|---|---|
| Northwest Catholic High School. | RF272–90845 |
| Pete's Gulf | RF300–16513 |
| Polkton Gulf | RF300–16701 |
| Poteet Independent School District. | RF272–91681 |
| Pyle Westgate Texaco | RF321–6902 |
| Ron's Gulf | RF300–16743 |
| Stout Grocery | RF300–16958 |
| Williams' Gulf | RF300–16704 |

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, Forestall 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: June 28, 1993.

**Thomas L. Wieker,**

*Acting Director, Office of Hearings and Appeals.*

[FR Doc. 93–15889 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–P

## Office of Hearings and Appeals

### Issuance of Decisions and Orders During the Week of May 3 Through May 7, 1993

During the week of May 3 through May 7, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for 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.

### Appeal

*Energy Products, Inc., 5/3/93, LFA–0281*

Energy Products, Inc. filed an Appeal from a determination issued to it by the Oak Ridge Field Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that Oak Ridge National Laboratory had performed an adequate search which uncovered no documents revealing the identity of Substance "S" in a report investigating certain properties of a class of building materials entitled "Preliminary Evaluation of Radiation Control Coatings For Energy Conservation in Buildings." The report had been prepared by Robert W. Anderson and Associates, Inc., a subcontractor to Martin Marietta Energy Systems, Inc., the prime contractor for the DOE at Oak Ridge National Laboratory. The DOE did determine, however, that the Building Systems Division of the Office of Building Energy Research in the Office of Conservation and Renewable Energy at the DOE Headquarters in Washington, DC also reviewed the report and could have responsive documents. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Freedom of Information and Privacy Branch at DOE Headquarters to determine which other branches of the DOE, if any, may have responsive documents, and to have those branches initiate a search for any such documents.

### Implementation of Special Refund Procedures

*Whitaker Oil Company, 5/6/93, LEF–0052*

The DOE issued a Decision and Order setting forth refund procedures to distribute $302,541.89 plus interest, received as a result of an Agreed Judgment between Whitaker Oil Company and the DOE. The Decision sets forth refund application procedures for customers who purchased diesel fuel, kerosene, and toluene from Whitaker during the period from November 1973 through March 1974 and xylene from November 1973 through January 1974. Specific information regarding the data to be included in refund applications is discussed in the Decision.

### Refund Applications

*Gulf Oil Corp./Perry North Main Gulf, 5/7/93, RF40–3711*

On September 17, 1986, the DOE issued a Decision and Order in the first Gulf Oil Corp. refund proceeding concerning an Application for Refund filed by Perry North Main Gulf. The amount of that refund was based upon a purchase schedule prepared by Walter Perry, the owner of the retail outlet. Mr. Perry subsequently filed an application in the Texaco Inc. refund proceeding. The purchase schedule that he submitted in the Texaco proceeding was essentially the same as the schedule he submitted in the Gulf-I proceeding. When asked to clarify who his supplier was, Mr. Perry stated that he obtained product from both Gulf and Texaco and that the purchase schedules he submitted included products from both suppliers. Consequently, product that Mr. Perry obtained from Texaco was included in the calculation of his Gulf refund. Accordingly, the DOE found that Mr. Perry had received a refund in the Gulf proceeding that was larger than that to which he was entitled. The DOE directed Mr. Perry and Energy Refunds, Inc., the representative through which Mr. Perry filed his application, to repay, with interest, that portion of the Gulf-I refund attributable to purchases made from Texcaco.

*Shell Oil Company Paragas, Inc. RF315–7493; Vangas, Inc. RF315–7494; Suburban Propane Gas Corp. RF315–7495; Petrolane Incorporated, 5/3/93, RF315–9222*

The DOE issued a Decision and Order granting, in part, the Application for Refund filed in the Shell Oil Company special refund proceeding by Petrolane Incorporated (Petrolane). The DOE granted Petrolane a full volumetric refund for its own Shell purchases based upon the firm's competitive disadvantage analysis. The DOE rejected, however, the firm's claims based upon purchases made by three affiliated firms which Petrolane acquired after the refund period because Petrolane did not present evidence necessary to prove injury for the affiliates' purchases and was not entitled to a presumption of injury refund for any additional purchases. For similar reasons, the DOE denied three applications filed by Quantum Chemical Corporation (Quantum) on behalf of Pargas, Inc. (Pargas), Vangas, Inc. (Vangas), and Suburban Propane Gas Corp. (Suburban). Because Quantum and Petrolane are affiliated and the operations of Suburban and Petrolane are interviewed, the DOE considered the four applications together to determine the total refund amount. As Petrolane was granted a refund of $83,436 (comprised of $56,175 principal and $27,261 interest), the DOE denied additional presumption refunds to Quantum for Shell purchases made by Pargas, Vangas, and Suburban.

*Texaco Inc./Leland Eckman, 5/4/93, RF321–19715*

The DOE issued a Supplemental Order to notify a refund granted to Leland Eckman (Case No. RF321–7103) in Texaco Inc./Corrigan Texaco Service, Case Nos. RF321–7100 et al. (May 9, 1991). Specifically, the DOE determined that the factual basis underlying the approval of Mr. Eckman's refund in the May 9, 1991 Decision and Order was inaccurate. Since the refund had been disbursed to Leland Eckman, the DOE required Mr. Eckman to remit to the DOE the sum of $832 ($763 incorrectly granted and $69 interest).

**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.

| | | |
|---|---|---|
| Alden Central School et. al | RF272–80605 | 05/07/93 |
| Atlantic Richfield Company/Coolidge Square Service Stat. et. al | RF304–1383 | 05/06/93 |
| Atlantic Richfield Company/K&B Service Station | RR304–59 | 05/06/93 |
| Atlantic Richfield Company/ Ralston Purina Company et. al | RF304–12975 | 05/05/93 |
| Atlantic Richfield Company/Seal Beach Arco Service et. al | RF304–13795 | 05/04/93 |
| Atlantic Richfield Company/Timonium Atlantic et. al | RF304–13812 | 05/04/93 |
| Chesterfield School District et. al | RF272–80486 | 05/07/93 |
| City of Longmont | RF272–83315 | 05/03/93 |
| Town of Marblehead | RF272–83352 | |
| Cith of Revere | RF272–83485 | |
| City of Morgan Hill | RF272–83514 | |
| City of Paris | RF272–83313 | 05/05/93 |
| Village of Crestwood | RF272–83573 | |
| Village of Whitefish Bay | RF272–83593 | |
| Ritzville School District | RF272–92122 | |
| Getty Oil Company/ S.O.S. Oil Corporation | RF265–2300 | 05/03/93 |
| Gouverneur Central School et. al | RF272–84340 | 05/07/93 |
| Gulf Oil Corporation/Central Solvents & Chemicals Co. et. al | RF300–18546 | 05/05/93 |
| Gulf Oil Corporation/Hinds Gulf | RF300–21736 | 05/05/93 |
| Gulf Oil Corporation/J.H. Rose Truck Lines, Inc | RF300–12905 | 05/06/93 |
| Gulf Oil Corporation/Larcon Petroleum Company | RF300–16874 | 05/07/93 |
| Gulf Oil Corporation/Mohawk Rubber Company | RF300–21737 | 05/06/93 |
| Gulf Oil Corporation/Stadium Service Center, Inc. | RF300–17909 | 05/05/93 |
| Reda's Service Station, Inc | RF300–17923 | |
| R&I Service Station, Inc | RF300–17924 | |
| Joplin School Dist. R–VIII et. al | RF272–81960 | 05/07/93 |
| Maple Dale-Indian Hill School District et. al | RF272–83815 | 05/05/93 |
| Miller Pipeline Corp | RF272–77628 | 05/04/93 |
| Apex Bulk Commodities | RF272–7836 | |
| Murfreesboro City Elem. Sch. Dist. et. al | RF272–78842 | 05/03/93 |
| Roane County Highway Dept. et. al | RF272–91701 | 05/03/93 |
| Texaco Inc./Bobber Auto/Truck Plaza et. al | RF321–16435 | 05/04/93 |
| Texaco Inc./Carl May and Viola May et. al | RF321–16777 | 05/05/93 |
| Texaco Inc./North Hill Texaco | RF321–19717 | 05/04/93 |
| United Oil Company | RF272–80168 | 05/07/93 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| 50th and Boston Gulf | RF300–11729 |
| Austin Nail | RF272–91867 |
| Borough of North Catasauqua. | RF272–88111 |
| Borough of Paulsboro | RF272–88119 |
| Bruce Cava | RF304–3354 |
| Carbon County | RF272–87745 |
| City of Metropolis | RF272–88152 |
| City of Mount Vernon | RF272–88113 |
| City of Vernon | RF272–88199 |
| Coast Gas, Inc. | RF304–8885 |
| County of Parmer | RF272–87706 |
| Dows Community School District. | RF272–87174 |
| Early Independent School Dist. | RF272–88177 |
| Eastern Sierra Unified | RF272–88176 |
| Easton Community Unit School District. | RF272–88174 |
| Ernest L. Johnson | RF321–14236 |
| Fredon Twp School District . | RF272–88181 |
| Ganado Unified School District 20. | RF272–88180 |
| Gardner Comm Cons School District 72C. | RF272–88173 |
| Godfrey Lee Public School District. | RF272–88167 |
| Goodman-Armstrong School District. | RF272–88166 |
| Hagar's Texaco | RF321–10605 |
| Ivan Sand | RF272–91893 |
| James River Corporation | RF304–13677 |
| Jimmy Withers Texaco Station. | RF321–10874 |
| John R. Veazey | RF272–91726 |
| Ken Parent's Texaco | RF321–10912 |
| Lyle Kufahl | RF272–91816 |
| McComas Truck Line, Inc. | RF272–84297 |
| Municipality of Monroe | RF272–88158 |
| Ray's Texaco | RF321–4530 |
| Robert E. Fitts | RF272–91849 |
| Shepard's Texaco | RF321–18331 |
| Skarrup Shipping Corp. | RD272–63888 |
| Sunny Isle Gulf | RF300–16248 |
| Talladega County Commission. | RF272–78100 |
| Therriault's Texaco | RF321–10763 |
| Tire Town Texaco | RF321–10908 |
| Town of Harvard | RF272–84252 |
| Town of Pembroke Park | RF272–88116 |
| Town of Post | RF272–88145 |
| Truckstops of America | RF321–19439 |
| Village of South Nyack | RF272–87960 |
| West Park Texaco | RF321–7142 |
| Wilburn Howton | RF272–91770 |

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: June 29, 1993.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 93–15890 Filed 7–2–93; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–4675–7]**

### Establishment and Notice of Open Meeting of the Committee on Hazardous Waste Identification

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

**ACTION:** Establishment of FACA Committee and Meeting Announcement.

**SUMMARY:** As required by section (9)(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the establishment of the Hazardous Waste Identification Committee. We have determined that establishing this committee is in the public interest and will assist the Agency in performing its duties and responsibilities prescribed in the Resource Conservation and Recovery Act. This committee will continue the work of the dialogue group on hazardous waste identification that has been meeting in announced, open, public sessions since January 1993.

Copies of the Committee Charter have been filed with the appropriate committees of Congress and the Library of Congress.

The Committee will meet on July 20–21, 1993. The Committee's facilitator has notified interested parties of the meeting dates. The purpose of the meeting is to finalize operational groundrules for committee operations and to discuss issues relating to regulation of contaminated media and as generated waste. The Committee meeting is open to the public without need for advance registration. The public should be advised that portions of either or both days may involve non-plenary, private, workgroup sessions.

**DATES:** The Committee will meet on July 20 and 21 from 9: a.m. to 5 p.m. each day.

**ADDRESSES:** The meeting will be at the Hyatt Regency Hotel, 2799 Jeff Davis Highway, Crystal City, Arlington, Virginia (703) 418–1234.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on the substantive matters should contact William A. Collins, Jr., Office of Solid Waste, OS–333, Environmental Protection Agency, Washington, DC 20460; phone (202) 260–4791. Persons needing further information on procedural matters should call the Committee's Co-facilitator, Michael Young, Endispute, New York City, (212) 233–8300.

**SUPPLEMENTARY INFORMATION:**

## I. Background: Need for the Committee

The committee will provide a forum to discuss appropriate procedures and standards to identify and govern safe management of mixtures and derivatives of hazardous waste, contaminated media, and remediation waste. It is hoped that a consensus on the most feasible changes to current regulation may be possible but, at a minimum, EPA would like to ensure that all changes are identified and thoroughly evaluated. The output of the committee will be options for modifying regulations for the identification and management of waste regulated by RCRA.

## III. Dialogue Committee Membership

The following organizations are represented on the committee. The Environmental Protection Agency considers this a balanced committee.

*Members*

Federal Government

Environmental Protection Agency

State Governments

Oregon Department of Environmental Quality
Minnesota Pollution Control Agency
Oklahoma

Industry

U.S. Chamber of Commerce
American Iron and Steel Institute
Chevron Corporation/American Petroleum Institute
Dow Chemical Corporation/Chemical Manufacturers Association
General Electric Corporation

Environmental Groups

Natural Resources Defense Council
Environmental Defense Fund

Waste Treatment Industry

Hazardous Waste Treatment Council
Institute of Chemical Waste Management

## IV. Committee Procedures

### *E. Schedule for the Committee*

The EPA has currently set a deadline of October 31, 1993 for the committee to complete work on this project. The agency may terminate the activities of the Committee if it does not appear likely to reach consensus or complete its evaluations on a schedule that is consistent with Agency goals. If significant progress is being made, the Agency may consider extending the October 31, 1993 deadline.

The following procedures and guidelines will apply to the Committee unless they are modified by the Committee during the dialogue process.

### *A. Facilitator*

EPA will use a neutral facilitator. The facilitator will not make recommendations on substantive manners being considered by the committee. The facilitator's role is to:

- Chair committee meetings;
- Help the process run smoothly;
- Assist participants in articulating their interests, identifying areas of agreement, and developing consensus solutions to the problems that divide them.

### *B. Administrative Support*

The EPA will supply logistical, administrative and management support. If it is deemed necessary and appropriate, EPA will provide technical support to the committee in gathering and analyzing additional data or information. The Office of Policy, Planning and Evaluation, Consensus and Dispute Resolution Program will provide administrative support.

### *C. Meetings*

Most meetings will be held in the Washington area at the convenience of the Committee. EPA will announce Committee meetings in the **Federal Register** in accordance with FACA. Such meetings will be open to the public.

### *D. Committee Procedures*

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

### *E. Record of Meetings*

In accordance with FACA's requirements, EPA will keep a summary of all Advisory Committee meetings. These summaries and meeting documents, as well as summaries of the open meetings held since January 1993, will be placed in the administrative record for Hazardous Waste Identification and are available through the RCRA Docket (F93–HWIP–FFFFF). The docket is located in room 2616M, 2nd Floor Waterside Mall, 401 M Street SW., Washington, DC. It is open between 8:30 a.m. and noon, and 1:30 p.m. until 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

Dated: June 30, 1993.

**Chris Kirtz,**

*Director, Consensus and Dispute Resolution Program.*

[FR Doc. 93–15860 Filed 7–2–93; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–4675–3]

## Proposed Settlement Under Section 7003 of the Resource Conservation and Recovery Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement and opportunity for public comment.

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**SUMMARY:** The U.S. Environmental Protection Agency ("EPA") proposes to

enter into an administrative settlement to resolve claims under the Solid Waste Disposal Act of 1976, as amended by the Resource Conservation and Recovery Act ("RCRA"). Notice is being published to inform the public of the proposed settlement and administrative record and of the opportunity to comment. The settlement is intended to establish to the actions that Reese Air Force Base must take to address the potential for imminent and substantial endangerment of public health and the environment around the Base. Reese Air Force Base is located approximately seven miles from Lubbock, Texas.

**DATES:** Comments must be provided on or before July 19, 1993.

**ADDRESSES:** Comments should be addressed to the U.S. Environmental Protection Agency, Region 6, Office of Regional Counsel, Multi-Media Enforcement (6C–M), 1445 Ross Avenue, Dallas, Texas 75202 and should refer to: In Re: Reese Air Force Base, Docket No. VI–7003–93–01.

**FOR FURTHER INFORMATION CONTACT:** U.S. Environmental Protection Agency, Region 6, Hazardous Waste Management Division, RCRA Enforcement Branch, Texas Section, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–6719, Attention: Bobby Williams.

**SUPPLEMENTARY INFORMATION:** EPA issued an Administrative Order On Consent to Reese Air Force Base, located approximately seven miles west of Lubbock, Texas. Preliminary investigations by Reese and EPA indicate that some private water wells near the base are contaminated with trichloroethylene (TCE), an organic compound typically used in solvents and degreasers. The presence of the TCE may be dangerous to human health and the environment.

Reese has agreed to undertake all actions outlined in the Order, including: (1) Provide alternative sources of water to affected households and businesses, and (2) conduct an extensive investigation of the water supply wells surrounding the base.

This Order is issued pursuant to EPA's authority under section 7003(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. In keeping with this authority, EPA is inviting the public to comment on this Order.

The Order and the administrative record supporting the issuance of the Order will be available for public review on Mondays through Fridays, from 8:30 a.m. to 4:30 p.m., at the library of the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. The Order and the administrative record are also available for public review at the Lubbock City/County Public Library, 1306 9th Street, Lubbock, Texas. EPA will be accepting comments on the Order until July 22, 1993.

A copy of the Order may be obtained in person or by mail from U.S. Environmental Protection Agency, Region 6, Hazardous Waste Management Division, RCRA Enforcement Branch, Texas Section, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–6719, Attention: Bobby Williams.

Dated: June 22, 1993.

**Joe D. Winkle,**

*Acting Regional Administrator.*

[FR Doc. 93–15863 Filed 7–2–93; 8:45 am]

BILLING CODE 6560–50–P

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**[FRL–4675–4]**

## Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed de minimis settlement.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). This settlement is intended to resolve the liability of United Refrigerated Services, Inc. (URS) for the response costs incurred and to be incurred at the 29th and Mead Superfund Site, Wichita, Kansas.

**DATES:** Written comments must be provided on or before August 5, 1993.

**ADDRESSES:** Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of 29th and Mead Site, Wichita, Kansas, United Refrigerated Services, Inc., EPA Docket No. 93–F–0017.

**FOR FURTHER INFORMATION CONTACT:** Belinda Holmes, Associate Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7714.

**SUPPLEMENTARY INFORMATION:** The proposed settling party is United Refrigerated Services, Inc. (URS), the owner of approximately 14.1 acres of property that is part of the 29th and Mead Superfund Site (the Site). EPA, the United States Geological Survey and the Kansas Department of Health and Environment (KDHE) began investigating ground water contamination at the Site in 1983. These investigations revealed the presence of volatile organic compounds (VOCs), including trichloroethylene (TCE), carbon tetrachloride ($CCl_4$), toluene, benzene, ethylbenzene, methylene chloride, trans and/or cis 1,2-dichloroethylene, vinyl chloride, and 1,1,1-trichloroethane (TCA), in the ground water at the Site. The Site encompasses more than 1440 acres in an industrial area in the northern part of Wichita, Kansas. The Site was placed on the National Priorities List on February 21, 1990.

KDHE assumed the role of lead agency at the Site pursuant to a cooperative agreement between EPA and KDHE. In 1989, a group of potentially responsible parties (PRPs) known as the Wichita North Industrial District (WNID) group signed an agreement with KDHE to perform a Remedial Investigation (RI) to determine the nature and extent of the contamination at the Site and a Feasibility Study (FS) to evaluate the various alternatives for remedial action. The RI/FS is currently underway at the Site. Earlier investigations had revealed a highly concentrated plume of contamination around the manufacturing facility owned and operated by Evcon Industries, Inc., formerly owned and operated by The Coleman Company, Inc. In order to address this area, KDHE and EPA designated the area the "Coleman Operable Unit" and published a Record of Decision (ROD) for the Coleman Operable Unit in September, 1992, which calls for the contaminated ground water to be extracted and treated and for the soil contamination at the Coleman Operable Unit to be treated using soil vapor extraction.

URS has operated a refrigerated storage warehouse on its property at 2707 N. Mead, Wichita, Kansas, since 1979. Soil samples from the URS property collected and analyzed by URS contained none of the hazardous substances listed above in any detectable amounts. In addition, investigations conducted by EPA and/or KDHE have demonstrated that URS has not generated, stored, treated or disposed of any hazardous substance found at the Site.

The proposed settlement provides access to URS' property to EPA, KDHE

and parties designated by EPA or KDHE as their representatives, contractors or agents, as well as to any other persons performing response actions at the Site under EPA's oversight. In addition, URS has agreed to require any lessee or transferee of its property, as a term of any sale, lease or other transfer, to grant access as set forth above. Access to URS' property may be needed for taking soil or ground water samples or installing ground water extraction or monitoring wells.

The proposed settlement involves no financial terms; the proposed settling part is required only to provide access. The proposed de minimis settlement provides that EPA will covenant not to sue URS for response costs at the Site or for injunctive relief pursuant to sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act of 1980, as amended (RCRA), 42 U.S.C. 6973. The proposed settlement contains a reopener clause which nullifies the covenant not to sue if any information becomes known to EPA that indicates that URS: (1) Conducted or permitted the generation, transportation, storage, treatment or disposal of any hazardous substance at the Site; (2) contributed to a release or threat of release of a hazardous substance at the Site through any act or omission; or (3) that URS no longer meets the criteria for a de minimis settlement set forth in section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(b).

Dated: June 14, 1993.

**Carl M. Walter,**

*Acting Regional Administrator.*

[FR Doc. 93–15872 Filed 7–2–93; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 1950]**

### Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 29, 1993.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed July 21, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

**SUBJECT:** Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation. (MM Docket No. 92–266)

Number of Petitions filed: 53.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–15828 Filed 7–2–93; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL MARITIME COMMISSION

### Port of New Orleans/Hoogewerff (USA) Inc.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or 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 and protests are found in § 560.602 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224–200780.

*Title:* Port of New Orleans/Hoogewerff (USA), Inc. Project Cargo Shipper's Agreement.

*Parties:*

The Port of New Orleans (Port)
Hoogewerff (USA), Inc.

*Filing Party:* Joseph W. Fritz, Jr., Staff Attorney, Board of Commissioners, of the Port of New Orleans, P.O. Box 60046, New Orleans, Louisiana 70160.

*Synopsis:* The Agreement establishes a wharfage rate of $0.85 per short ton for approximately 9,300 tons of cargo.

By Order of the Federal Maritime Commission.

Dated: June 29, 1993.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–15785 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

### The MOL/HMM Space Charter Agreement in the Far East—U.S. Pacific Northwest Trades; Notice of 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, 800 North Capitol Street, NW., 9th Floor. 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.:* 217–011376–002

*Title:* The MOL/HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades.

*Parties:*

Mitsui O.S.K. Lines, Ltd.,
Hyundai Merchant Marine Co., Ltd:

*Synopsis:* The proposed amendment adds Kawasaki Kisen Kaisha, Ltd. as a party to the Agreement. It also changes the name of the Agreement to The KL, MOL and HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades.

*Agreement No.:* 224–200781.

*Title:* Port of New York and New Jersey/Italia di Navigazione SPA Container Incentive Agreement.

*Parties:*

The Port Authority of New York and New Jersey ("Port"),
Italia di Navigazione SPA ("Italia").

*Synopsis:* The Agreement provides that the Port will pay Italia a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

*Agreement No.:* 224–200782.

*Title:* Port of New York and New Jersey/Hanjin, Shipping Container Incentive Agreement.

*Parties:*

The Port Authority of New York and New Jersey ("Port"),

Hanjin Shipping ("Hanjin").

*Synopsis:* The Agreement provides that the Port will pay Hanjin a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

*Agreement No.:* 224–200783

*Title:* Port of New York and New Jersey/NYK Line, Container Incentive Agreement.

*Parties:*

The Port Authority of New York and New Jersey ("Port"),

NYK Line (North America) Inc. ("NYK").

*Synopsis:* The Agreement provides that the Port will pay NYK a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

By Order of the Federal Maritime Commission.

Dated: June 29, 1993.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–15786 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

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**Organization and Functions of the Federal Maritime Commission; C.O. 1, Amdt. No. 21**

The following delegation is made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, Section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by adding subsection 9.17 to read as follows:

9.17 Authority contained in 46 CFR part 514 to temporarily exempt common carriers from the electronic tariff filing requirements of that part for a period not to exceed 90 days from the filing dates set forth in Supplemental Report No. 4 and Order, served in Docket No. 90–23 on May 28, 1993.

Dated: June 24, 1993.

**William D. Hathaway,**

*Chairman.*

[FR Doc. 93–15783 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

**Organization and Functions of the Federal Maritime Commission; C.O. 1, Amdt. No. 22**

The following delegation is made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, Section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by adding subsection 9.18 to read as follows:

9.18 Authority contained in Supplemental Report No. 4 and Order in Docket No. 90–23, Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce—Tariffs and Service Contracts to grant special permission to deviate from the requirement that electronically-filed tariffs become effective no later than 90 days from the last day of the applicable filing window.

Dated: June 24, 1993.

**William D. Hathaway,**

*Chairman.*

[FR Doc. 93–15784 Filed 7–2–93; 8:45 am]

BILLING CODE 6730–01–M

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## FEDERAL RESERVE SYSTEM

**BB&T Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 30, 1993.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. BB&T Financial Corporation,* Wilson, North Carolina; to acquire 100 percent of the voting shares of Mutual Savings Bank of Rockingham County, SSB, Reidsville, North Carolina.

*2. Southern National Corporation,* Lumberton, North Carolina; to acquire 100 percent of the voting shares of East Coast Savings Bank, Inc., SSB, Goldsboro, North Carolina.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. First American Corporation,* Nashville, Tennessee; to acquire 100 percent of the voting shares of First American National Bank of Kentucky, Bowling Green, Kentucky, formerly known as First Federal Savings and Loan Association of Bowling Green, Bowling Green, Kentucky.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Lima Bancshares, Inc.,* Lima, Illinois; to acquire 16.67 percent of the voting shares of East Dubuque Bancshares, Inc., East Dubuque, Illinois. In connection with this application, East Dubuque Bancshares, Inc., East Dubuque, Illinois, has applied to become a bank holding company by acquiring 100 percent of the voting shares of East Dubuque Investment Corporation, East Dubuque, Illinois, and thereby indirectly acquire 89.98 percent of the voting shares of East Dubuque Savings Bank, East Dubuque, Illinois.

**D. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Missoula Bancshares, Inc.,* Missoula, Montana; to become a bank holding company by acquiring 98.02 percent of the voting shares of First Security Bank of Missoula, Missoula, Montana.

Board of Governors of the Federal Reserve System, June 29, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–15814 Filed 7–2–93; 8:45 am]

BILLING CODE 6210–01–F

### Laddie Cimpl Revocable Trust/Doris Cimpl Revocable Trust; Change in Bank Control Notice

### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1993.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Laddie Cimpl Revocable Trust/ Doris Cimpl Revocable Trust*, Yankton, South Dakota; to acquire 28.7 percent of the voting shares of First Dakota Financial Corporation, Yankton, South Dakota, and thereby indirectly acquire First Dakota National Bank, Yankton, South Dakota, and McCook County National Bank, Yankton, South Dakota.

Board of Governors of the Federal Reserve System, June 29, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–15815 Filed 7–2–93; 8:45 am]

BILLING CODE 6210–01–F

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board

**AGENCY:** General Accounting Office.

**ACTION:** Announcement of July meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, July 22, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes a presentation on the entity display project; discussions of issues regarding the cost project, and of issues in the draft documents on: (1) Government corporations, (2) liabilities and future claims, and (3) investments.

Other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Ronald S. Young, Staff Director, 750 First St., NE., Suite 1001, Washington, DC 20002, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Public Law 92–463, section 10(a)(2), 86 stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: June 30, 1993.

**Jimmie D. Brown,**

*Deputy Director.*

[FR Doc. 93–15864 Filed 7–2–93; 8:45 am]

BILLING CODE 1610–01–M

## GENERAL SERVICES ADMINISTRATION

### Information Collection Activities Under Office of Management and Budget Review

**AGENCY:** Federal Domestic Assistance Catalog Staff (WKU), GSA.

**SUMMARY:** The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve new information collection, Questionnaire, Catalog of Federal Domestic Assistance. This Information Collection will be a two-time survey of Catalog Users, to ensure that the Catalog is well designed to meet user's needs. The GSA will mail the Questionnaire to selected Catalog users and will place it inside the Catalog so that all users will have the opportunity to comment on the Catalog's contents, if they so desire.

**ADDRESSES:** Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 2,000; annual responses: 2,000; average hours per response: .1; burden hours: 200.

**FOR FURTHER INFORMATION CONTACT:** Jackie Garrett, (202) 708–5126. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: June 25, 1993.

**Emily C. Karam,**

*Director, Information Management Division.*

[FR Doc. 93–15773 Filed 7–2–93; 8:45 am]

BILLING CODE 6820–25–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 91N–0219]**

### Regulatory Flexibility Analysis of the Final Rules to Amend the Food Labeling Regulations; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990" that the agency has prepared under the Regulatory Flexibility Act (Pub. L. 96–354) on the impact of the food labeling regulations issued in the Federal Register of January 6, 1993. The agency has prepared this comprehensive document for these final rules because, when taken together, they will have a significant impact on a substantial number of small firms.

**ADDRESSES:** Submit written requests for single copies of the document "Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990" to the Economics Branch (HFS–726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The document is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Williams, Jr., Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5271.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 6, 1993 (58 FR 2066 et seq.), FDA published final rules implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). The Regulatory Flexibility Act requires the agency, as part of that rulemaking, to examine the effect that the rulemaking will have on small entities, including small businesses. Because of the statutory timeframes imposed by the 1990 amendments for completion of the final food labeling regulations, FDA delayed the completion of its regulatory flexibility analysis (see 58 FR 2927) in accordance with section 608(b) of the Regulatory Flexibility Act.

FDA has now completed its comprehensive analysis of the food labeling final rules and has determined that the final rules, when taken together, will have a significant impact on a substantial number of small firms. The agency is hereby announcing the availability of its Regulatory Flexibility Act analysis for the food labeling final rules.

Dated: June 30, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–15893 Filed 6–30–93; 3:51 pm]

BILLING CODE 4160–01–F

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**[Docket No. 86G–0321]**

## Donath-Kelterei; Withdrawal of GRAS Affirmation Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 6G0314) requesting that the agency affirm that the puree and juice from the sea buckthorn berry *Hippophae rhamnoides* L. be affirmed as generally recognized as safe (GRAS).

**FOR FURTHER INFORMATION CONTACT:** Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 2, 1986 (51 FR 31175), FDA published a notice that a petition (GRASP 6G0314) had been filed by Donath-Kelterei, Gutenbergstrasse 4, 8043 Unterföhring, West Germany, proposing that the use of puree and juice from the sea buckthorn berry *Hippophae rhamnoides* L. be affirmed as GRAS. Donath-Kelterei has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 28, 1993.

**L. Robert Lake,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 93–15871 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

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**[Docket No. 93M–0124]**

## Dornier Medical Systems, Inc.; Premarket Approval of MFL5000 Lithotripter

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Dornier Medical Systems, Inc., Kennesaw, GA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the MFL5000 Lithotripter. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 8, 1993, of the approval of the supplemental application.

**DATES:** Petitions for administrative review by August 6, 1993.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Marsha Melvin, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1194.

**SUPPLEMENTARY INFORMATION:** On May 11, 1992, Dornier Medical Systems, Inc., Kennesaw, GA 30144, submitted to CDRH a supplemental application for premarket approval of the MFL5000 Lithotripter. The device is an extracorporeal shock wave lithotripter and is indicated for fragmentation of stones in the urinary tract, such as renal calyceal stones, renal pelvic stones, upper ureteral stones, and middle and lower ureteral stones greater than or equal to 10 millimeters in diameter.

On December 16, 1992, the Gastroenterology-Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On March 8, 1993, CDRH approved the supplemental application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this supplemental application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 6, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d),

360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1993.

**Joseph A. Levitt,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 93–15780 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

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[Docket No. 93D–0204]

## Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials; Alternative Review Procedure Guidance; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials." The guidance is established for manufacturers of devices affected by Dow Corning's withdrawal of implant grade silicone from the market. The guidance describes the procedures to be followed by manufacturers in determining when to make a submission pursuant to an alternative review process.

**DATES:** Written comments by September 7, 1993. FDA's Center for Devices and Radiological Health will establish a separate queue for the review of submissions for devices affected by the withdrawal of one or more of the Dow Corning silicone materials listed below from July 6, 1993, until July 7, 1994.

**ADDRESSES:** Submit written requests for single copies of "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597, or 1–800–638–2041. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–150), Food and Drug Administration, 12200 Wilkins Ave., Rockville, MD 20852, 301–443–7003.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Dow Corning has notified its customers and FDA that it will no longer manufacture and distribute the following materials:

Silastic MDX4–4515, Peroxide Cured 50D Elastomer;

Silastic MDX4–4516, Peroxide Cured 60D Elastomer;

Silastic Q7–2245, Platinum Cured 40D Elastomer;

Silastic Q7–2213, Dispersion in Clorothene;

Silastic HP Tubing;

Silastic Implant Grade and Medical Grade sheeting; and

Materials for any applications related to reproduction, contraception, obstetrics, or cosmetic surgery and procedures.

These materials are used in the manufacture of a large number and wide variety of marketed medical devices. For some of these devices, a change in the supplier of any of these materials could significantly affect the safety and effectiveness of the device. While it is important in these circumstances for FDA to be informed of these changes when they occur, a new premarket notification submission under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) and 21 CFR 807.81(a)(3)(i), or a supplemental premarket approval application under section 515 of the act and 21 CFR 814.39 is necessary only when the change could significantly affect the safety or effectiveness of the device. Ordinarily these submissions are required to be submitted and approved before the device may be marketed with the change. However, because of the great number of devices that are involved, many of which are extremely significant or even crucial to the health of many patients, FDA believes that removal of these devices from the market during the review of these submissions would be detrimental to the public health. Consequently, in the exercise of its enforcement discretion, FDA has developed a strategy to allow producers of medical devices that are manufactured from one or more of these materials to continue to market their devices pending submission and FDA review of premarket submissions (510(k)'s or premarket approval supplements). FDA is creating an alternate notification and review process for devices affected by Dow Corning's market withdrawal. The agency is announcing the availability of a guidance detailing the notification process, the eligibility requirements, and the procedures to be followed by manufacturers of affected devices to pursue an alternative review process and thereby continue to market their devices without interruption. Written comments may be submitted on this guidance until September 7, 1993. The comments will be considered in determining whether amendments to the guidance document are warranted.

### I. Notification of Changes

Within 60 days following publication of this notice, manufacturers intending to continue to market their devices using a material from an alternate supplier shall submit to FDA a special notification containing the following information:

1. A list of each product for which an alternate material or alternate source will be used.

2. The reference number—510(k) or premarket approval application (PMA)—for each device.

3. The name and source of the replacement material.

4. A letter from the alternate supplier permitting reference to its master file, or results from the tests listed in the attached guidance. If tests are not complete, a date by which the testing is expected to be completed.

5. Results from any tests done by the manufacturer on the material or the device.

6. The manufacturer's determination as to whether the change of material may have a significant effect on the safety or effectiveness of the device.

FDA will review the notification and determine whether an application is required to be submitted for the change. FDA will also use the notification to schedule current good manufacturing practice (CGMP) inspections in a timely manner.

In the interest of administrative efficiency, FDA and the Center for Devices and Radiological Health (CDRH) will allow firms to submit a single notification under this guidance covering all affected devices manufactured by that firm. The notification should be marked "Special notification—silicone". However, separate 510(k) or PMA applications shall be submitted for products for which such submissions are required.

**II. Review process**

For a period of 12 months following publication of this notice in the **Federal Register**, FDA's CDRH will establish a queue, as discussed below, for the review of submissions for devices affected by the withdrawal of one or more of the Dow Corning silicone materials listed above. This queue is separate from the established queues for review of premarket approval supplements and 510(k)'s. The review priority within this queue will be on a first-in-first-reviewed basis.

**III. Entry criteria**

For an application to be considered in this queue, all of the following requirements must be met:

1. The product must be manufactured from one or more of the silicone materials formerly manufactured by Dow Corning and identified in this notice;

2. The manufacturer must have submitted a "Special notification—Silicone" to FDA.

3. The application must be for a device which has been cleared for marketing under an existing PMA or premarket notification submission (510(k)), or for a preamendments device for which the manufacturer can document the use of one of these materials and for which PMA's have not yet been required;

4. The manufacturer can demonstrate, and is willing to certify, that only Dow Corning has been its source for the silicone material used in its device;

5. The new submission must relate only to the change in the source of the silicone material, and must include a certification that the sponsor has identified an alternative source of material and that it has conducted the tests recommended by the agency to establish that the material supplied by the new supplier is not substantially different from the material that had been supplied by the initially approved supplier. Because the initial certification will be based primarily on the physiochemical characterization of the material, the manufacturer will be required to submit a schedule of dates by which it will submit the results from applicable bioassays; and

6. The submission clearly references this **Federal Register** notice on page one.

Complete and appropriate applications, 510(k)'s or PMA's as described in the act, will be required for each individual device in order to complete the device evaluation process. Manufacturers are also reminded that these applications will be subject to both the agency policy of consulting with the Office of Compliance and Surveillance Reference List and the class III, 510(k) inspection program for determining substantial compliance with the medical device CGMP regulation (21 CFR part 820).

Special Submissions should be sent to: Document Mail Center (HFZ–401), Center for Devices and Radiological Health, Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850. Submissions must clearly reference the document numbers that identified the initial submission (except for preamendments devices).

Dated: June 29, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–15779 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

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**Indian Health Service**

**Privacy Act of 1974; Alteration of Systems of Records**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notification of an Altered System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of an alteration of system of records 09–17–0001, "Health and Medical Records Systems, HHS/IHS/OHP."

**DATES:** The PHS invites interested parties to submit comments on the proposed internal and routine uses on or before August 5, 1993. The PHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget (OMB) on June 21, 1993. The alteration to the system will be effective 60 days from the date of publication, unless PHS receives comments which would result in a contrary determination.

**ADDRESSES:** Please submit comments to: IHS Privacy Act Officer, Indian Health Service, Parklawn Building, Room 6–37, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0461.

Comments received will be available for inspection at this same address from 8:30 a.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Clinical and Preventive Health Services, Indian Health Service, 5600 Fishers Lane, Room 6A–54, Rockville, Maryland 20857, (301) 443–4644.

The telephone numbers listed above are not toll free.

**SUPPLEMENTARY INFORMATION:** The Indian Health Service (IHS) currently maintains a System of Records (SOR) concerning its Health and Medical Records. We are altering this system to inform the patient of the relationship IHS has established with the Social Security Administration (SSA) regarding Social Security Numbers (SSNs). Patients are asked to disclose their SSN to IHS health care providers after being informed of: 1) the purpose of collecting the SSN, i.e., for uniquely identifying patient records, reducing duplicative counting of cases of a disease, improving patient and health program management, and third-party billing; 2) that refusal will not result in denial of services, and, 3) that IHS is working with the SSA to verify the SSN provided or obtain an SSN, if available, when the patient does not know his SSN or declines to provide it.

In order to maintain the integrity of its national patient care database, IHS plans to submit, on an annual basis, automated patient records containing the SSN's collected from patients to the SSA for verification purposes. The SSA will inform IHS whether the SSN on the IHS record matches the SSN in the SSA file for the person with the same name, date of birth (DOB), and sex. If there is not a complete match, SSA will inform IHS which key items (name/DOB/sex) do not match. In certain cases, SSA will provide IHS with a different SSN than which IHS furnished to the SSA, e.g., where a complete match would occur if 2 digits of the IHS-furnished SSN were transposed. The IHS will make appropriate changes to the patient record as well as notify the patient of these changes to the record.

In order to fill data gaps in its national patient care database, IHS plans to submit, on an annual basis, automated patient records lacking SSNs to SSA to seek to obtain, where available, SSNs from the SSA file. The SSA will provide IHS with an SSN when the IHS record matches a record in the SSA file on name, DOB, and sex. The IHS will enter the SSA-furnished SSN in the patient record as well as notify the patient of this addition to the record. The IHS will inform patients, as part of the Privacy Act Notification Statement, that if they do not provide their SSN the IHS will seek to obtain the SSN from the SSA.

This notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

09–17–0001

SYSTEM NAME

Health and Medical Records Systems, HHS/IHS/OHP.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

Indian Health Service (IHS) hospitals, health centers, school health centers, health stations, field clinics, Service Units, IHS Area Offices (Appendix 1), and Regional Federal Records Centers (Appendix 2). Automated records, including Patient Care Component (PCC) records, are stored at the Data Processing Service Center, IHS, located in Albuquerque, New Mexico (Appendix 1). Records may also be located at hospitals and offices of health care providers who are under contract to IHS, including Tribal contractors. A current list of contractor site, including Tribal contractors, is available by writing to the appropriate System Manager (Area or Service Unit Director) at the address shown in Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals, including both IHS beneficiaries and nonbeneficiaries, who are examined/treated on an inpatient and/or outpatient basis by IHS staff and/or contract (including tribal contract) health care providers.

CATEGORIES OF RECORDS IN THE SYSTEM

1. Health and medical records containing: examination, diagnostic and treatment data, proof of IHS eligibility, social data such as name, address, date of birth, Social Security Number, tribe; case records for special programs such as: dental, social service, mental health, nursing; and laboratory test results. 2. Follow-up registers of individuals with specific health conditions or a particular health status such as: tumors, communicable diseases, hospital commitment, suspected and confirmed physical child abuse and neglect, immunizations, self-destructive behavior, or handicap. 3. Logs of individuals provided health care by staffs of specific hospital components such as: surgery, emergency, obstetric delivery, x-ray and laboratory. 4. Operation and/or disease indices for particular hospitals which list each relevant patient by the operation or disease. 5. Monitoring strips and tapes such as fetal monitoring strips and EEG and EKG tapes. 6. Third-party reimbursement records containing name, address, date of birth, date of admission and Medicare or Medicaid claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to process and validate third-party reimbursement claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Section 321 of the Public Health Service Act, as amended, (42 U.S.C. 248), "Hospitals, Medical Examinations and Medical Care." Section 327A of the Public Health Service Act, as amended, (42 U.S.C. 254a–1), "Hospital-Affiliated Primary Care Centers." Indian Self Determination and Education Assistance Act (25 U.S.C. 450). Snyder Act (25 U.S.C. 13). Indian Health Care Improvement Act (25 U.S.C. 1601 et. seq). Construction of Community Hospitals Act (25 U.S.C. 2005–2005f). Indian Health Service Transfer Act (42 U.S.C. 2001–2004).

PURPOSES

The purposes of this system are:

1. To provide a description of a patient's illness, the treatment administered and results achieved, and to plan for future care of the patient.

2. To provide IHS program officials with statistical data upon which the health care program is evaluated and modified to meet future needs.

3. To serve as a means of communication among members of the health care team who contribute to the patient's care by integrating information from field visits with that from IHS facilities which have provided treatment.

4. To serve as the official documentation of health care rendered.

5. To contribute to continuing education of IHS staff to improve their competency to deliver health care services.

6. For disease surveillance purposes. For example:

(a) The Centers for Disease Control may use these records for their monitoring of various communicable diseases among persons residing within the United States; and,

(b) The National Institutes of Health may use these records for their review of the prevalence of particular diseases (i.e., malignant neoplasms, diabetes mellitus, arthritis, metabolism and digestive diseases) for various ethnic groups of the Nation.

7. To compile and provide aggregated program statistics. Upon request of other components of the Department, IHS will provide statistical information, from which individual identifiers have been removed, such as:

(a) To the National Center for Health Statistics, for its dissemination of aggregated health statistics for various ethnic groups;

(b) To the Assistant Secretary for Population Affairs to keep a record of the number of sterilizations provided through the use of Federal funds;

(c) To the Health Care Financing Administration for the documentation of IHS health care covered by the Medicare and Medicaid programs for third-party reimbursement; and

(d) To the Bureau of Support Services, Health Care Financing Administration, to determine the prevalence of end-stage renal disease among the American Indian and Alaska Native population and to coordinate the care of American Indian and Alaska Native patients with this condition.

8. To process and collect third-party claims.

9. To improve the IHS national patient care database through obtaining and verifying patients' SSNs with the Social Security Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

Note: Special requirements for alcohol and drug abuse patients: If an individual receives treatment, or referral for treatment, for alcohol or drug abuse, then the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2 may apply. In general under these regulations, the only disclosures of the alcohol or drug abuse record which may be made without patient consent are: (1) To meet medical emergencies (42 CFR Part D, Sec. 2.51), (2) for research, audit, evaluation and examination (42 CFR Part D, Secs. 2.52 and 2.53), (3) pursuant to a court order (42 CFR 2.61–2.67), and (4) pursuant to a qualified service organization agreement, as defined in 42 CFR 2.11. In all other situations, written consent of the patient is usually required prior to disclosure of alcohol or drug abuse information under the routine uses listed below. Individuals acting *in loco parentis* to minors, as well as parents, legal guardians, and custodians may act on behalf of the subject individual for purposes of giving consent for disclosures to others when it is determined that the subject individual is a minor who is unable to or cannot exercise with appropriate understanding, the right of consent by himself or herself.

1. Records may be disclosed to State, local or other authorized organizations which provide health services to American Indians and Alaska Natives, or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements and reporting results of medical examination and treatment.

2. Records may be disclosed to Federal and non-Federal school systems which serve American Indians and

Alaska Natives for the purpose of student health maintenance.

3. Records may be disclosed to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits, utilization review or to provide accreditation or certification of health care facilities or programs.

4. Records may be disclosed to authorized organizations, such as the United States Office of Technology Assessment, or individuals for conduct of analytical and evaluation studies sponsored by the IHS.

5. Records may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject individual.

6. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. The IHS health care providers may disclose information from these records regarding the commission of crimes or the occurrence of communicable diseases, tumors, suspected child abuse, births, deaths, alcohol or drug abuse, etc., as required by Federal law or regulation or State or local law or regulation of the jurisdiction in which the facility is located. Disclosure may be made to organizations as specified by the law or regulation, such as births and deaths to State or local health departments, and crimes to law enforcement agencies. In federally conducted or assisted alcohol or drug abuse programs, the disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis or treatment of alcohol or drug abuse is restricted under 42 CFR part 2; e.g., disclosure of patient information on alcohol and drug abuse for purposes of criminal investigation generally must be authorized by court order issued under 42 CFR 2.65 except that reports of suspected child abuse may be made to the appropriate State or local authorities under State law.

8. The IHS health care providers may disclose information from these records regarding suspected cases of child abuse to: (1) Agencies of any Indian tribe, any State or the Federal Government that need to know the information in the performance of their duties, and (2) members of community child protection teams of the purpose of establishing a diagnosis, formulating a treatment plan, monitoring the plan, investigation reports of suspected child abuse, and making recommendations to the appropriate court. Community child protection teams are comprised of representatives of: tribes, the Bureau of Indian Affairs, child protection service agencies, the judicial system(s) (local, State and/or tribal, law enforcement agencies and IHS). In federally conducted or assisted alcohol or drug abuse programs, the disclosure to the contents of records which pertain to patient identity, diagnosis, prognosis, or treatment of alcohol or drug abuse is restricted under 42 CFR part 2; e.g., disclosure of patient information on alcohol or drug abuse for purposes of criminal investigation generally must be authorized by court order issued under 42 CFR 2.65 except that reports of suspected child abuse by be made to the appropriate State or local authorities under State law.

9. The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) any HHS employee in his or her official capacity; or

(c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

10. Records may be disclosed to the Bureau of Indian Affairs and its contractors for the identification of American Indian and Alaska Native handicapped children to permit that Bureau to carry out the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et seq.).

11. Records may be disclosed to an IHS contractor, including tribal contractors, for the purpose of computerized data entry or maintenance of records contained in this system. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

12. Records may be disclosed to a health care provider undercontract to IHS (including tribal contractors) to permit the contractor to obtain health and medical information about the subject individual in order to provide appropriate health services to that individual. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

13. Records may be disclosed to the State of Alaska, Department of Health and Social Services (DHSS) (which supplies part or all of this information to IHS), in response to its request for patient summaries, portions of immunization registers, disease indices and other computer-generated medical summaries. This information assists DHSS in its provision of health care to the subject individual. Disclosure to the State of Alaska's DHSS is limited to information concerning its patients.

14. Disclosures regarding specific medical services may be made from the records of a minor patient to the minor's parent or legal guardian who previously consented to those specific medical services.

15. (a) PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with

the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances:

(1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors;

(2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s);

(3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and

(4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has, notified such sexual or needle-sharing partner(s).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM**

**STORAGE**

File folders, ledgers, card files, microfiche, microfilm, computer tapes, disk packs and automated files.

**RETRIEVABILITY**

Indexed by name, record number, and SSN and cross-indexed.

**SAFEGUARDS**

Safeguards apply to records stored on-site and off-site.

*1. Authorized Users*

Access is limited to authorized IHS personnel and IHS contractors and subcontractors in the performance of their duties. Authorized personnel include: Medical records personnel, health care providers, authorized researchers, medical audit personnel, and health care team members, and, administrative personnel on a need to know basis.

*2. Physical Safeguards*

Records are kept in locked metal filing cabinets or in a secured room at all times when not actually in use during working hours and at all times during nonworking hours. Magnetic tapes, disks, other computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Telecommunication equipment (computer terminal, modems and disks) of the Patient Care Component (PCC) are maintained in locked rooms during nonworking hours. Combinations on door locks are changed periodically and whenever a PCC employee resigns, retires or is reassigned.

*3. Procedural Safeguards*

Within each facility a list of personnel or categories of personnel having a demonstrable need for the records in the performance of their duties has been developed and is maintained. Procedures have been developed and implemented to review one-time requests for disclosure to personnel who may not be on the authorized user list. Proper charge-out procedures are followed for the removal of all records from the area in which they are maintained. Persons who have a need to know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records. They are to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act, and to destroy all copies or to return such records when the need to know has expired. Procedural instructions include the statutory penalties for noncompliance.

The following automated information systems (AIS) security procedural safeguards are in place for automated health and medical records maintained in the Patient Care Component. A profile of automated systems security is maintained. Security clearance procedures for screening individuals, both Government and contractor personnel, prior to their participation in the design, operation, use or maintenance of IHS automated information systems are implemented. The use of current passwords and log-on codes are required to protect sensitive automated data from unauthorized access. Such passwords and codes are changed periodically. An automated audit trail is maintained. Only authorized IHS Division of Data Processing Services staff may modify automated files in batch mode. Personnel at remote terminal sites may only retrieve automated data. Such retrievals are password protected.

Privacy Act requirements and specified Automated Information System security provisions are specifically included in contracts and agreements and the system manager or his/her designee oversee compliance with these contract requirements.

*4. Implementing Guidelines*

DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General administration Manual; and DHHS, "Automated Information Systems Security Program Handbook", as amended.

**RETENTION AND DISPOSAL**

Patient listings which may identify individuals are maintained in IHS Area and Program Offices permanently. Inactive records are held at the facility which provided health services from three to seven years and then are transferred to the appropriate Federal Records Center. Monitoring strips and tapes (i.e., fetal monitoring strips and EEG and EKG tapes) which are not stored in the patient's official medical record, are stored at the health facility for one year and are then transferred to the appropriate Federal Records Center. (See Appendix 2 for Federal Record Center addresses). Records, including those maintained on computer media are retained in useable formats at the Regional Federal Records Centers for 25 years. Disposal methods include burning or shredding of hard copy and erasing of magnetic media.

**SYSTEM MANAGER(S) AND ADDRESS**

Policy-Coordinating Official: Director, Division of Clinical and Preventive Health Services, Indian Health Service, 5600 Fishers Lane, Room 6A–54, Rockville, Maryland 20857. See Appendix 1. The IHS Area Office Directors, Service Unit Directors, Chief Executive Officers and Facility Directors listed in Appendix 1 are System Managers.

**NOTIFICATION PROCEDURE:**

*General Procedure*

Requests must be made to the appropriate System Manager (IHS Area/Program Office Director or Service Unit Director). An individual who requests a copy of, or access to, a medical record shall at the time the request is made designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Such a representative may be an IHS health professional. When an individual is seeking to obtain information about himself/herself which may be retrieved by a different name or identifier than his/her current name or identifier, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks. No verification of identity shall be required where the record is one which is

required to be disclosed under the Freedom of Information Act.

*Requests In Person*

Identificaiton papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to the designated agency employee, such employee shall make a written record verifying the subject individual's identity. If the subject individual has no identification papers, the responsible system manager or designated agency official shall require that the subject individual certify in writing that he/she is the individual whom he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 dollar's fine. If an individual is unable to sign his/her name when required, he/she shall make his/her mark and have the mark verified in writing by two additional persons.

*Requests By Mail*

Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes. If the written request does not contain sufficient information, the System Manager shall inform the requester in writing that additional, specified information is required to process the request.

*Requests By Telephone*

Since positive identification of the caller cannot be established, telephone requests are not honored.

*Parents And Legal Guardians*

Parents of minor children and legal guardians of legally incompetent individuals shall verify their own identification in the manner described above, as well as their relationship to the individual whose record is sought. A copy of the child's birth certificate or court order establishing legal guardianship may be required if there is any doubt regarding the relationship of the individual to the patient.

**RECORD ACCESS PROCEDURES**

Same as Notification Procedures. Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their record, if any

**CONTESTING RECORD PROCEDURES**

Write to the appropriate IHS Area/Program Office Director or Service Unit Director at his/her address specified in Appendix 1, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES**

Patient and/or family members, IHS health care personnel, contract health care providers, State and local health care provider organizations, Medicare and Medicaid funding agencies, and the Social Security Administration.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT**

None.

**Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records are Maintained**

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401.
Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625.
Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, Ft. Thompson, South Dakota 57339.
Director, Flandreau Indian School Health Center, RR1, Box 10, Flandreau, South Dakota 57028.
Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763.
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335.
Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752.
Director, Lower Brule Indian Health Center, Lower Brule, South Dakota 57548.
Director, McLaughlin Indian Health Center, McLaughlin, South Dakota 57642.
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071.
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770.
Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57701.
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570.
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262.
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538.
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316.
Director, Wahpeton Indian School Health Center, Wahpeton, North Dakota 58075.
Director, Wanblee Indian Health Center, Wanblee, South Dakota 57577.
Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner, South Dakota 57380.
Director, Director, Alaska Area Native Health Service, 250 Gambell Street, Anchorage, Alaska 99501.
Director, Alaska Native Health Center, St. George Island, Alaska 99660.
Director, Alaska Native Health Center, St. Paul Island, Alaska 99660.
Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, 255 Gambell St., Anchorage, Alaska 99501.
Director, Annette Islands Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926.
Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723.
Director, Ketchikan Alaska Native Health Center, 3289 Tongass Avenue, Ketchikan, Alaska 99901.
Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752.
Director, Southeast Area Regional Health Center, 3272 Hospital Drive, Juneau, Alaska 99801.
Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Center, Bethel, Alaska 99559.
Director, Albuquerque Area Indian Health Service, 505 Marquette, N.W., Suite 1502, Albuquerque, New Mexico 87102–2163.
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049.
Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, N.E., Albuquerque, New Mexico 87106.
Director, Canoncito Indian Health Station, c/o Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049.
Director, Cochiti Indian Health Station, Cochiti, New Mexico 87041.
Director, Dulce Indian Health Center, Dulce, New Mexico 87528.
Chief, Dental Program, IHS Dental Training Center, Southwestern Indian Polytechnical Institute, 9168 Coors Road, N.W., P.O. Box 25927, Albuquerque, New Mexico 87125.
Director, Indian School Health Center, Southwestern Indian Polytechnical Institute, 9168 Coors Road, N.W., P.O. Box 25927, Albuquerque, New Mexico 87125.
Director, Isleta Indian Health Center, P.O. Box 429, Isleta, New Mexico 87022.
Director, Jemez Indian Health Center, P.O. Box 256, Jemez Pueblo, New Mexico 87024.
Director, Laguna Indian Health Center, P.O. Box 199, New Laguna, New Mexico 87038.
Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340.
Director, New Sunrise Regional Treatment Center, P.O. Box 219, San Fidel, New Mexico 87049.
Director, Sandia Indian Health Station, P.O. Box 6008, Bernalillo, New Mexico 87004.

Director, Santa Ana Indian Health Station, P.O. Box 580, Bernalillo, New Mexico 87004.
Director, San Felipe Indian Health Station, General Delivery, San Felipe Pueblo, New Mexico 87001.
Director, San Juan Indian Health Station, San Juan, New Mexico 87566.
Director, Santa Clara Indian Health Center, P.O. Box 1322, Espanola, New Mexico 87532.
Director, Santo Domingo Indian Health Station, Santo Domingo, New Mexico 87052.
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501.
Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137.
Director, Southern Ute Health Center, Ignacio, Colorado 81137.
Director, Taos Indian Health Center, Taos, New Mexico 87571.
Director, Ute Mountain Ute Health Center, Towaoc, Colorado 81334.
Director, White Mesa Indian Health Station, General Delivery, Towaoc, Colorado 81334.
Director, Zia Indian Health Station, General Delivery, San Ysidro, New Mexico 87053.
Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327.
Director, Bemidji Area Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601.
Director, Ball Club Indian Health Station, Ball Club, Minnesota 56622.
Director, Cass Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633.
Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788.
Director, Inger Indian Health Station, Inger Route, Deer River, Minnesota 56636.
Director, Naytahwaush Indian Health Station, Naytahwaush, Minnesota 56566.
Director, Onigum Indian Health Station, Star Route, Walker, Minnesota 56484.
Director, Pine Point Indian Health Station, White Earth, Minnesota 56591.
Director, Ponemah Indian Health Station, Ponemah, Minnesota 56666.
Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671.
Director, Squaw Lake Indian Health Station, Squaw Lake, Minnesota 56681.
Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591.
Director, Billings Area Indian Health Service, P.O. Box 2143, 711 Central Avenue, Billings, Montana 59103.
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510.
Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417.
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022.
Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865.
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526.
Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255.
Director, Hays Indian Health Station, Hays, Montana 59527.
Director, Heart Butte Indian Health Station, Heart Butte, Montana 59448.
Director, Lodge Grass Indian Health Center, Lodge Grass, Montana 59050.
Director, Northern Cheyenne Service Unit, Lame Dear Indian Health Center, Lame Deer, Montana 59043.
Director, Pryor Indian Health Station, Pryor, Montana 59066.
Director, Polson Indian Health Center, 320–B 4th Avenue East, Polson, Montana 59860.
Director, Rocky Boy's Service Unit, Box Elder Indian Health Center, Box Elder, Montana 59521.
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514.
Director, Wolf Point Indian Health Center, Wolf Point, Montana 59201.
Director, California Area Indian Health Service, 1825 Bell Street, Suite 200, Sacramento, California 95825–1097.
Director, Nashville Area Indian Health Service, 3310 Perimeter Hill Drive, Nashville, Tennessee 37211–4139.
Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719.
Director, Unity Regional Youth Treatment Center, P.O. Box C–201, Cherokee, North Carolina 28719.
Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515.
Director, Chilchinbeto Indian Health Station, c/o Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Chief Executive Officer, Chinle Service Unit, P.O. Drawer P.H., Chinle, Arizona 86503.
Chief Executive Officer, Crownpoint Service Unit, Crownpoint Indian Hospital, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Dennebito Indian Health Station, c/o Tuba City Indian Hospital, Tuba City, Arizona 86045.
Director, Dennehotso Indian Health Center, c/o Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Director, Dilkon Indian Health Station, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Director, Dzilth-Na-O-Dith-Le Indian Health Center, Star Route 4, Box 5400, Bloomfield, New Mexico 87413.
Chief Executive Officer, Fort Defiance Service Unit, Fort Defiance Indian Hospital, P.O. Box 649, Fort Defiance, Arizona 86504.
Director, Fort Wingate Indian School Health Center, c/o Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87301.
Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87301.
Director, Inscription House Indian Health Center, P.O. Box 7397, Shonto, Arizona 86044.
Chief Executive Officer, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 366, Kayenta, Arizona 86033.
Director, Leupp Indian Health Station, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Facility Director, Montezuma Creek Health Center, Montezuma Creek, Utah 84534.
Director, Pinon Indian Health Station, c/o Chinle Indian Hospital, P.O. Box P.H., Chinle, Arizona 85603.
Director, Pueblo Pintado Indian Health Station, c/o Crownpoint Indian Hospital, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Rock Point Indian Health Station, c/o Chinle Indian Hospital, P.O. Box P.H., Chinle, Arizona 85603.
Director, Sanostee Indian Health Station, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Chief Executive Officer, Shiprock Service Unit, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Teec Nos Pos Indian Health Center, P.O. Drawer D, Teec Nos Pos, Arizona 85614.
Director, Toadlena Indian Health Station, c/o Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325.
Chief Executive Officer, Tsaile Indian Health Center, P.O. Box 467, Tsaile, Arizona 86556.
Chief Executive Officer, Tuba City Service Unit, Tuba City Indian Hospital, Tuba City, Arizona 86045.
Chief Executive Officer, Winslow Service Unit, Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 N.W. 56th Street, Oklahoma City, Oklahoma 73112.
Director, Carl Albert Indian Hospital, 1001 North Country Club Drive, Ada, Oklahoma 74820.
Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005.
Director, Carnegie Indian Health Center, P.O. Box 1120, Carnegie, Oklahoma 73150.
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard & Moore, Claremore, Oklahoma 74017.
Director, Clinton Service Unit, Clinton Indian Hospital, Route 4, Box 213, Clinton, Oklahoma 73601.
Director, Concho Indian Health Clinic, P.O. Box 150, Concho, Oklahoma 73022.
Director, Kansas Service Unit, Holton Indian Health Center, 100 West 16th Street, Holton, Kansas 66436.
Facility Director, Lawrence (Haskell) Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044.
Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501.
Director, Miami Indian Health Center, P.O. Box 1498, Miami, Oklahoma 74855.
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056.
Director, Pawnee Service Unit, Pawnee Indian Service Center, RR2, Box 1, Pawnee, Oklahoma 74058.
Director, Shawnee Service Unit, Shawnee Indian Health Center, 2001 South Gordon Cooper Drive, Shawnee, Oklahoma 74801.

Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464.
Director, Watonga Indian Health Center, P.O. Box 878, Watonga, Oklahoma 73772.
Director, Wewoka Indian Health Center, P.O. Box 1475, Wewoka, Oklahoma 74884.
Director, White Eagle Indian Health Center, P.O. Box 2071, Ponca City, Oklahoma 74601.
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981.
Director, Bylas Indian Health Center, P.O. Box 208, San Carlos, Arizona 85550.
Director, Chemehuevi Indian Health Clinic, Chemehuevi Valley, California 92363.
Director, Cibecue Indian Health Center, Cibecue, Arizona 85941.
Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12, Parker, Arizona 85344.
Director, Fort McDermitt Indian Health Station, P.O. Box 475, McDermitt, Nevada 89421.
Director, Fort McDowell Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85364.
Director, Gila Crossing Indian Health Clinic, Route 1, Box 770, Laveen, Arizona 85339.
Director, Havasupai Indian Health Station, Supai, Arizona 86435.
Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034.
Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832.
Director, Peach Springs Indian Health Center, Peach Springs, Arizona 86434.
Director, Phoenix Indian School Health Center, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016.
Director, Pyramid Lake Indian Health Clinic, Nixon, Nevada 89424.
Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247.
Director, Salt River Indian Health Center, Route 1, Box 215, Scottsdale, Arizona 85256.
Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos, Arizona 85550.
Director, San Lucy Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.
Director, Schurz Service Unit, Schurz Indian Hospital, Schurz, Nevada 89427.
Director, Second Mesa Indian Health Center, General Delivery, Second Mesa, Arizona 86043.
Director, Sherman Indian School Health Center, 8934 Magnolia, Riverside, California 92503.
Director, Southern Bank Indian Health Clinic, 1545 Silver Eagle Road, Elko, Nevada 89801.
Director, Stewart Indian Health Station, Stewart, Nevada 89437.
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Roosevelt, Utah 84066.
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, Whiteriver, Arizona 85941.
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2829.
Director, Chemawa Indian Health Center, 3750 Chemawa Road, NE., Salem, Oregon 97305–1198.
Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington 99155.
Director, Coeur d'Alene Indian Health Station, Coeur d'Alene, Idaho 83814.
Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203.
Director, Inchelium Indian Health Center, Inchelium, Washington 99138.
Director, Kamiah Indian Health Station, Kamiah, Idaho 83536.
Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 418, Neah Bay, Washington 98357.
Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapwai, Idaho 83540.
Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225.
Director, Puget Sound Service Unit, Puget Sound Indian Health Station, 1212 South Judkins, Seattle, Washington 98144.
Director, Queets Indian Health Station, c/o Service Unit Director, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587.
Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587.
Director, Warm Springs Service Unit, Wellpinit Indian Health Center, P.O. Box 357, Wellpinit, Oregon 99040.
Director, Wellpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Wellpinit, Washington 99040.
Director, Yakima Service Unit, Yakima Indian Health Center, 401 Buster Road, Toppenish, Washington 98948.
Director, Yellowhawk Service Unit, Yellowhawk Indian Health Center, P.O. Box 160, Pendleton, Oregon 97801.
Director, Office of Health Program Research & Development, Indian Health Service, 7900 S. J. Stock Road, Tucson, Arizona 85746–9352.
Director, Santa Rosa Indian Health Center, HCR Box 700, Sells, Arizona 85634.
Director, San Xavier Indian Health Center, 7900 S. J. Stock Road, Tucson, Arizona 85746–9352.
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634.

**Appendix 2—Federal Archives and Records Centers**

District of Columbia, Maryland Except U.S. Court Records for Maryland, Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409.
GSA Region 1—Connecticut, Maine, and Rhode Island, Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154.
GSA Region 2—New York, Federal Archives and Records Center, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002.
GSA Region 3—Pennsylvania, Federal Archives and Records Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144.
GSA Region 4—Alabama, Florida, Mississippi and North Carolina, Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.
GSA Region 5—Wisconsin, Minnesota and U.S. Court Records for Michigan, Federal Archives and Records Center, 7358 South Pulaski Rd., Chicago, IL 60629.
GSA Region 5—Michigan Except U.S. Court Records, Federal Records Center, 3150 Springboro Road, Dayton, OH 45439.
GSA Region 6—Kansas, Iowa, and Nebraska, Federal Archives and Records Center, 2306 East Bannister Rd., Kansas City, MO 64131.
GSA Region 7—Louisiana, New Mexico, Oklahoma and Texas, Federal Archives and Records Center, P.O. Box 6216, Ft. Worth, TX 76115.
GSA Region 8—Colorado, Wyoming, Utah, Montana, North Dakota and South Dakota, Federal Archives and Records Center, P.O. Box 25307, Denver, CO 80225.
GSA Region 9—California, Except Southern California, and Nevada, Except Clark County, Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, CA 94066.
GSA Region 9—Arizona: Clark County, Nevada and Southern California (Counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial Inyo, and San Diego), Federal Archives and Records Center, 24000 Avila Road, Laguna Niguel, CA 92677.
GSA Region 10—Washington, Oregon, Idaho and Alaska, Federal Archives and Records Center, 6125 Sand Point Way, Seattle, WA 98115.

Dated: June 24, 1993.

**Wilford J. Forbush,**

*Director, Office of Management.*

[FR Doc. 93–15777 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–16–M

## Public Health Service

### National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 19466, April 14, 1993), is amended to reflect the reorganization of the National Institute of Environmental Health Sciences (NIEHS) (HNV), National

Institutes of Health (NIH). This reorganization will: (1) Transfer the functions of the Division of Toxicology Research and Testing (DTRT) (HNV5) and the Division of Biometry and Risk Assessment (DBRA) (HNV6) to the Division of Intramural Research (HNV2) and abolish the DTRT and the DBRA; and (2) revise the functional statement of the Division of Intramural Research (HNV2). This reorganization will consolidate the NIEHS intramural functions within the Division of Intramural Research in order to facilitate the pursuit of new research opportunities, and promote the highest level of research in environmental health sciences, environmental medicines, environmental epidemiology, and toxicology.

*Section HN–B, Organization and Functions,* is amended as follows: (1) Under the heading *Division of Intramural Research (HNV2),* delete the functional statement in its entirety and insert the following:

(1) Plans and conducts the Institute's basic laboratory and clinical research, which encompasses the environmental areas of medicine, biology, pharmacology, neurosciences and pulmonary pathobiology, chemistry, toxicology, genetics, and biophysics;

(2) Plans and conducts a program of toxicology and carcinogenesis studies to establish and characterize the toxicity of chemicals and other environmental agents, and develop, validate, and evaluate such methods;

(3) Plans and conducts basic and applied research related to environmental health in the areas of risk assessment, statistics, biomathematics, and epidemiology;

(4) Ensures optimal utilization of available resources in the attainment of Institute objectives;

(5) Evaluates research efforts and establishes intramural priorities;

(6) Integrates ongoing and new research activities into the division structure;

(7) Collaborates with other NIH Institutes, divisions and programs;

(8) Maintains an active association with peer groups in other Federal agencies, academic and private institutions, and international organizations with similar environmental health research interests, and disseminates research results; and

(9) Provides advice to the Institute Director and staff on matters of scientific interest.

(2) Under the heading *Division of Toxicology Research and Testing (HNV5),* and the *Division of Biometry and Risk Assessment (HNV6),* delete the title and functional statements in their entirety.

*Delegations of Authority Statement:* All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: July 11, 1993.

**Bernadine Healy,**

*Director, NIH.*

[FR Doc. 93–15865 Filed 7–2–93; 8:45 am]

BILLING CODE 4140–01–M

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**[GN# 2100]**

## President's Council on Physical Fitness and Sports; Termination of Agreement

**AGENCY:** Office of the Assistant Secretary for Health, HHS.

**ACTION:** Notice of termination of agreement.

**SUMMARY:** The President's Council on Physical Fitness and Sports (PCPFS) has decided to continue the PCPFS' President's Challenge and to terminate its Agreement to unify two physical fitness testing programs.

**FOR FURTHER INFORMATION CONTACT:** Christine G. Spain, M.A., Director, Research, Planning & Special Projects, PCPFS, 701 Pennsylvania Avenue, NW., suite 250, Washington, DC 20004, 202–272–3424.

**SUPPLEMENTARY INFORMATION:** On July 20, 1992, a notice was published in the **Federal Register** (57 FR 32022) inviting public comment concerning the appropriateness of the PCPFS and the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) entering into an agreement to develop a uniform national physical fitness testing program. The full text of the Agreement also was published. Two hundred and ten comments were received in response to the notice, 85 in favor of the merger and 125 opposed. Based upon a decision of the then Assistant Secretary for Health, Dr. James O. Mason, the comments were reviewed by the Department's Office of General Counsel, followed by a separate review by a departmentally-approved five-member peer review panel. The PCPFS has carefully considered the views expressed in the public comments as well as those of the members of the panel and has concluded that the two tests—AAHPERD's "Physical Best" and the PCPFS' "President's Challenge"—should continue to operate independently and not be merged. The effect of this decision is to terminate the Memorandum of Agreement between the PCPFS and AAHPERD.

Dated: June 28, 1993.

**Matthew Guidry,**

*Acting Executive Director, PCPS.*

[FR Doc. 93–15839 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–17–M

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## Substance Abuse and Mental Health Services Administration

## Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories that Have Withdrawn From the Program

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS (Formerly: 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.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

**FOR FURTHER INFORMATION CONTACT:** Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9–A–54, 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 certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: 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:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

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

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

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

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

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., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, Georgia 31604, 912–244–4468

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

ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, suite 354, Houston, TX 77030, 713–793–6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, suite E, Provo, UT 84604, 800–967–9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 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

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (address, phone, and name changed on 5/17/93: formerly MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

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, 410–536–1485, (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, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511
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, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100
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), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751
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
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294, (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (Formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
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, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (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)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. 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 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory withdrew from the National Laboratory Certification Program during June 1993:

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209–221–5655/800–448–7600

**Richard Kopanda,**

*Acting Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 93–15877 Filed 7–2–93; 8:45 am]
BILLING CODE 4160–20–U

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

**[Docket No. N–93–3556; FR–3357–C–02]**

### NOFA for the Operating Assistance and Capital Improvement Loan Components of the Flexible Subsidy Program for FY 1993; Correction

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

**ACTION:** Notice of Fund Availability (NOFA) for Fiscal Year 1993; correction.

**SUMMARY:** On June 7, 1993 (58 FR 32022), the Department published a NOFA to announce the availability of funding for the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program for Fiscal Year (FY) 1993. This document makes a correction to Section I.D.3.c. of the June 7, 1993 NOFA, which concerns the source of the owner contribution.

**DATES:** The due date for submission of applications by project owners in response to the June 7, 1993 NOFA is set forth in the NOFA at 58 FR 32022. This document does not change the due date.

**FOR FURTHER INFORMATION CONTACT:** Program Support Branch, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2654 (voice) or (202) 708–3938 (TDD for hearing-

impaired). (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:** The FY 1993 NOFA for the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program was published on June 7, 1993 (58 FR 32022). This document corrects an error that appeared in Section I.D.3.c. of the June 7, 1993 NOFA at 58 FR 32025, middle column, which concerns the source of the owner contribution. In that section of the NOFA, the Department stated that the owner contribution may not be taken from project income, "but may be made from distributions of surplus cash or residual receipts as appropriate, as defined in and permitted under the Regulatory Agreement." The language in quotations was inadvertently included.

The reference to "residual receipts" is not contained in the existing Flexible Subsidy regulations at 24 CFR part 219, and therefore the use of distribution of residual receipts as an owner contribution is not permitted by regulation. (See §§ 219.205(b)(2) and 219.305(c)(2) of the final rule published on July 21, 1992 (57 FR 32398).) Although the term "surplus cash" is referenced in existing §§ 219.205(b)(2) and 219.305(c)(2) of the Flexible Subsidy regulations, the Department is publishing a proposed rule that will propose to remove this term from these regulatory sections. The Department's experience is that, in practice, an owner contribution is not made from distributions of surplus cash, and the inclusion of this term in the regulatory sections concerning owner contribution only leads to confusion. As the proposed rule will point out, notably, any distributions to which a project owner is entitled, e.g., the up-to six percent distribution available to a limited distribution owner, once they have been distributed, can be applied toward an owner's contribution. Conversely, "surplus" funds not taken as a distribution by the owner, and that are applied or to be applied to project related accounts cannot be applied toward an owner's contribution.

Accordingly, for the reasons stated above, the following correction is made to FR.Doc.93–13288 published on June 7, 1993 at 58 FR 32022.

**Section I.D.3.c.—[Corrected]**

1. On page 58 FR 32025, in the second column, the first sentence of paragraph c of Section I.D.3 is corrected to read as follows (the remainder of paragraph c, as set forth on page 58 FR 32025, middle column, is unchanged):

c. *Source of contribution.* This owner contribution may not be taken from project income. * * *

Dated: June 29, 1993.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 93–15827 Filed 7–2–93; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–070–4210–05; COC 0125484]**

### Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Mesa County, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In response to an application from Mesa County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Mesa County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands currently leased to Mesa County for landfill purposes (R&PP lease COC–0125484) would continue to be used for landfill purposes. An additional 160 acres of contiguous land would be developed for a waste management park and expansion of the existing landfill.

Ute Principal Meridian

T. 2S., R. 1E.,

Currently leased for landfill purposes:

Sec. 4: S½NW¼, N½SW¼

Sec. 5; lot 7, S½NE¼, SE¼NW¼

Additional lands (not currently leased):

Sec. 4; SW¼NE¼, W½SE¼,

Sec. 9; NW¼NE¼

Containing 449.51 acres, more or less.

The lands are not needed for Federal purposes. Conveyance of surface and mineral estates is consistent with current BLM land use planning and would be in the public interest.

A patent, if issued, will be subject to the following reservations, terms, and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR part 302.)

3. A right-of-way thereon for ditches and canals constructed by authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

4. Those rights for overhead telephone line purposes as have been granted to Mountain States Telephone and Telegraph, its successors and assigns, by right-of-way Colorado 27354 under the Act of February 15, 1901, as amended (43 U.S.C. 959) across the SW¼NE¼, SE¼NW¼, NW¼SE¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

5. Those rights for road purposes as have been granted to Mesa County Road Department, its successors and assigns, by right-of-way Colorado 34353 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼ and NW¼SE¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

6. Those rights for overhead powerline purposes as have been granted to Grand Valley Rural Power, its successors and assigns, by right-of-way Colorado 40209 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼, SE¼NW¼ and NE¼SW¼ of section 4, T. 2S., 1E., Ute Principal Meridian.

7. Those rights for overhead telephone line purposes as have been granted to Mountain States Telephone and Telegraph, its successors and assigns, by right-of-way Colorado 40252 under the Act of October 21, 1976 (43 U.S.C. 1761) across the S½NW¼ and NE¼SW¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

8. Those rights for road purposes as have been granted to Orchard Mesa Aggregates, its successors and assigns, by Colorado 50785 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼ and SE¼NW¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

9. Those rights for buried telephone line purposes as have been granted to US West Communications, its successors and assigns, by Colorado 54593 under the Act of October 21, 1976 (43 U.S.C. 1761) across the SW¼NE¼ and NW¼SE¼ of section 4, T. 2S., R. 1E., Ute Principal Meridian.

10. As to the SW¼NE¼, SE¼NW¼, N½SW¼ and W½SE¼ of section 4; lot 7, the S½NE¼, and SE¼NW¼ of section 5; and the NW¼NE¼ of section 9, T. 2S., R. 1E., Ute Principal Meridian, Colorado, these lands are withdrawn for power purposes by Power Site Classification No. 392, approved July 29, 1948. The United States reserves the right to itself, its permittees or licensees to enter upon, occupy and use any part or all of the lands necessary for power purposes under part 1 of the Federal Power Act of August 26, 1935, as amended (16 U.S.C. 818) upon payment of damages to buildings or other

improvements caused by such entry. Any improvements or structures placed upon the land which shall be found to interfere with such power development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its permittees or licensees.

11. Mesa County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from: Ute Principal Meridian, Colorado, T. 2S, R. 1E, section 4: SW¼NE¼, S½NW¼, N½SW¼, W½SE¼; section 5: lot 7, S½NE¼, SE¼NW¼; section 9: NW¼NE¼, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

R&PP *CLASSIFICATION* COMMENTS: Interested parties may submit comments involving the suitability of the land for a landfill/waste management park.

Comments on the classification are restricted to whether the land is physically suited for a landfill/waste management park, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

R&PP *APPLICATION* COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill/waste management park.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the Interior Board of Land Appeals. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado.

Mesa County has also filed an application for the conveyance of the federal mineral estate for the above described lands under the provisions of section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719) and the regulations at 43 CFR part 2720.

The following lands, currently leased to Mesa County for landfill purposes are not proposed for conveyance. If a patent is issued, the R&PP lease will be terminated. Upon termination of the lease, the R&PP lease classification will be terminated.

**Ute Principal Meridian**

T. 2S., R. 1E.,

Section 5: lot 8, north ten chains of lot 5, N½SW¼SW¼

Containing 68.71 acres, more or less.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and conveyance of the mineral estate under the Federal Land Policy and Management Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the applications, or two years from the date of filling of the applications, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the lands to the District Manager, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: June 25, 1993.

**Tim Hartzell,**

*District Manager.*

[FR Doc. 93–15772 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–JB–U

## Geological Survey

### Technology Transfer Act of 1986

**AGENCY:** United States Geological Survey, Interior.

**ACTION:** Notice Of Proposed Cooperative Research and Development Agreement (CRADA) Negotiations.

**SUMMARY:** The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with the U.S. Department of Agriculture (USDA) and the Electric Power Research Institute (EPRI). The purpose of the CRADA is to conduct joint research regarding regional-scale watershed modeling under conditions of change. Any other organization interested in pursuing the possibility of a CRADA for similar kings of activities with the USGS should contact the USGS.

**ADDRESSES:** Inquiries may be addressed to the Office of the Assistant Director for Research, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 104, Reston, VA 22092.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anton L. Inderbitzen, address above.

**SUPPLEMENTARY INFORMATION:** This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: June 18, 1993.

**Anton L. Inderbitzen,**

*Deputy Assistant Director for Research.*

[FR Doc. 93–15810 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–31–M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* Rodney Graybill, Newark, NY. PRT–777253.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. J.M. Mullins, Grahamstown. South Africa, for the purpose of enhancement of survival of the species.

*Applicant:* Philadelphia Zoological Garden, Philadelphia, PA. PRT–777503.

The applicant requests a permit to import three male and three female bicolored tamarins (*Sanfuinus b. bicolor*) which were captive-born at Rio de Janeiro Primate Center, Rio de Janeiro, Brazil, for enhancement of propagation.

Written data or comments should be submitted to the Director, U.S. Fish and

Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX (703/358–2281).

Dated: June 30, 1993.

**Susan Jacobsen,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 93–15838 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–55–M

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 26, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 21, 1993.

**Beth L. Savage,**

*Acting Chief of Registration, National Register.*

CALIFORNIA

**Napa County**

Oakville Grocery, 7856 St. Helena Hwy., Oakville, 93000664

**Riverside County**

Arlington Branch Library and Fire Hall, 9556 Magnolia Ave., Riverside, 93000668

**San Benito County**

Hawkins, Joel and Rena, Hosue (Hollister MPS), 801 South St., Hollister, 93000669

**San Luis Obispo County**

Powerhouse, The, Jct. of S. Perimeter Rd. and Cuesta Ave., NE corner, San Luis Obispo, 93000670

**Santa Clara County**

Milpitas Grammer School, 160 N. Main St., Milpitas, 93000667

COLORADO

**Grand County**

Grand Lake Lodge, 15500 US 34, Grand Lake, 93000663

CONNECTICUT

**Litchfield County**

Catlin, J. Howard, House, 14 Knife Shop Rd., Litchfield, 93000672

KENTUCKY

**Christian County**

Alumni—Latham—Mooreland Historic District, Alumni Ave., Latham Ave. and Mooreland Dr., Hopkinsville, 93000696

**Washington County**

Hamilton Farm, US 150 0.7 mi. W of Parker's Branch crossing, Springfield vicinity, 93000695

**Wolfe County**

Hurst, William L., Law Office, N. Washington St., Campton, 93000697

LOUISIANA

**Orleans Parish**

LeBeuf Plantation House, 101 Carmick, US Naval Support Activity, New Orleans, 93000694

MARYLAND

**Frederick County**

Willard, George, House, 4804 Old Middletown Rd., Jefferson vicinity, 93000665

NEVADA

**Clark County**

Huntridge Theater, 1208 E. Charleston Blvd., Las Vegas, 93000686

**Storey County**

Chollar Mansion, 565 S. D St., Virginia City, 93000689

Parish House, 109 S. F St., Virginia City, 93000688

Piper—Beebe House, 2 S. A St., Virginia City, 93000684

Prescott, C. J., House, 12 Hickey St., Virginia City, 93000687

**Washoe County**

Southside School, 190 E. Liberty, Reno, 93000683

Veteran's Memorial School, 1200 Locust St., Reno, 93000690

**White Pine County**

*Capital Theater*, 460 Aultman St., Ely, 93000692

*Central Theater*, 145 W. 15th Ave., Ely, 93000691

*Ely L. D. S. Stake Tabernacle*, 900 Aultman St., Ely, 93000685

*Nevada Northern Railway East Ely Yards and Shops*, 11th St. E., N terminus, Ely, 93000693

**Carson City Independent City**

*Olcovich—Meyers House*, 214 W. King St., Carson City, 93000682

NEW MEXICO

**Rio Arriba County**

*Ku-ouinge (Late Prehistoric Cultural Developments Along the Rio Chama and Tributaries MPS)*, Address Restricted, Espanola vicinity, 93000674

*Pons ipa'Akeri (Late Prehistoric Cultural Developments Along the Rio Chama and Tributaries MPS)*, Address Restricted, Ojo Caliente vicinity, 93000673

*Posi-ouinge (Late Prehistoric Cultural Developments Along the Rio Chama and Tributaries MPS)*, Address Restricted, Ojo Caliente vicinity, 93000675

NEW YORK

**Chautauqua County**

*Pennsylvania Rail Station*, Water St., Mayville, 93000680

**Madison County**

*Nelson Welsh Congregational Church*, Jct. of Welsh Church and Old State Rds., Nelson vicinity, 93000681

**Suffolk County**

*Beachbend (Stony Brook Harbor Estates MPS)*, Smith Ln.,1 Nissequogue, 93000698

*By-the-Harbor (Stony Brook Harbor Estates MPS)*, Moriches Rd., Nissequogue, 93000699

*East Farm (Stony Brook Harbor Estates MPS)*, Harbor Rd., N side, at Shep Jones Ln., Head of the Harbor, 93000700

*Harbor House (Stony Brook Harbor Estates MPS)*, Spring Hollow Rd., Nissequogue, 93000701

*Land of Clover (Stony Brook Harbor Estates MPS)*, Long Beach Rd., S side, Nissequogue, 93000702

*Phyfe, James W. and Anne Smith, Estate (Stony Brook Harbor Estates MPS)*, 87 Stillwater Rd., Nissequogue, 93000704

*Rassapeaque (Stony Brook Harbor Estates MPS)*, Long Beach Rd., S side, Nissequogue, 93000705

*Ryan, William J., Estate (Stony Brook Harbor Estates MPS)*, Moriches Rd., Nissequogue, 93000706

*Shore Cottage (Stony Brook Harbor Estates MPS)*, Harbor Rd., E side, Head of the Harbor, 93000707

*The Mallows (Stony Brook Harbor Estates MPS)*, Emmet Way, Head of the Harbor, 93000703

*Wetherill, Kate Annette, Estate (Stony Brook Harbor Estates MPS)*, Harbor Hill Rd., S side, Head of the Harbor, 93000708

*Woodcrest (Stony Brook Harbor Estates MPS)*, Moriches Rd., Nissequogue, 93000709

OHIO

**Franklin County**

*Griswold Memorial Young Women's Christian Association*, 65 S. Fourth St., Columbus, 93000671

OKLAHOMA

**Stephens County**

*Chrislip, H. C., House*, 709 N. 14th St., Duncan, 93000677

VERMONT

**Windsor County**

*Brook Farm (Agricultural Resources of Vermont MPS)*, Twenty Mile Stream Rd. NW of Cavendish, Cavendish vicinity, 93000676

WISCONSIN

Portage County

*Folding Furniture Works Building*, 1020 First St., Stevens Point, 93000666

[FR Doc. 93–15836 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–32 (Sub-No. 52X) and No. AB–355 (Sub-No. 4X)]**

### Boston and Maine Corp—Abandonment Exemption—In Strafford County, NH Springfield Terminal Railway Co.—Discontinuance Exeption—In Strafford County, NH

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over approximately 2.12-miles of rail line between milepost D.7.71 and milepost D.9.83 in Rochester, Strafford County, NH.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, which previously moved over the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by 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; and (4) the requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) has been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance 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 (OFA) has been received, this exemption will be effective on August 7, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 19, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 28, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, N. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses the effects of the abandonment and discontinuance of service, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 13, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

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

*Secretary.*

[FR Doc. 93–15856 Filed 7–2–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns 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 request as long as it retains jurisdiction to do so.

**[Docket No. AB–32 (Sub-No. 50X) and No. AB–355 (Sub-No. 2X)]**

### Boston and Maine Corp.—Abandonment Exemption—In Hillsboro County, NH and Springfield Terminal Railway Co.—Discontinuance Exemption—In Hillsboro County, NH

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over 1.61 miles of rail line between milepost W.44.39 and milepost W.46.00 in Nashua, Hillsboro County, NH.[1]

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by 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; and (4) the requirements at 49 CFR 1105.7; 49 CFR 1105.8; 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment and discontinuance 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 (OFA) has been received, this exemption will be effective on August 5, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicants, in their verified notice, indicated a proposed consummation date of July 19, 1993. Because the verified notice was not filed until June 8, 1993, consummation should not have been proposed to take place prior to July 28, 1993. The applicants' representative has confirmed the corrected consummation date.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues

Continued

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 16, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should also be sent to applicants' representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses environment and historic impacts, if any, from this abandonment and discontinuance. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 9, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

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

*Secretary.*

[FR Doc. 93–15857 Filed 7–12–93; 8:45 am]

BILLING CODE 7035–01–M

(whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns 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.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

**[Docket No. AB–32 (Sub-No. 51X and No. AB–355 (Sub-No. 3X]**

## Boston and Maine Corp. Abandonment Exemption—In Essex County, MA and Springfield Terminal Railway Co.—Discontinuance Exemption—In Essex County, MA

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over approximately 0.82 miles of rail line between Mileposts 0.00 and 0.82, in Salem, Essex County, MA.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by 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 compliant within the 2-year period, and (4) that the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment and discontinuance of service 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 failed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 5, 1993, unless stayed pending reconsideration. Petitions to say that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 16, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses the effects of the abandonment and discontinuance of service, if any, on the environmental and historic resources. SEE will issue an environmental assessment (EA) by July 9, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

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

*Secretary.*

[FR Doc. 93–15858 Filed 7–2–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment (SEE) 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). Any entity seeking a stay on environmental grounds 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 Abandoment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

## DEPARTMENT OF JUSTICE

## Lodging of Settlement and Stipulation Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Clean Water Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Oconomowoc Electroplating Co., Inc.*, Case No. 90–C–735, was lodged on June 22, 1993, with the United States District Court for the Eastern District of Wisconsin.

The proposed Consent Decree resolves claims of the United States against defendant Oconomowoc Electroplating Co., Inc. ("OECI"). The United States' complaint alleged claims under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, for the recovery of past costs incurred by the United States at the Oconomowoc Electroplating Co. Site in Ashippun, Wisconsin, and under Section 309 of the Clean Water Act, 33 U.S.C. 1309, for violations of the National Pollutant Discharge Elimination Permit issued to OECI by the Wisconsin Department of Natural Resources. Under the terms of the Consent Decree, OECI agrees to provide the United States access to its facility and to refrain from further violations of the Clean Water Act. Settlement terms are based in part on OECI's inability to pay any penalty or contribute to the United States' response costs at the Oconomowoc Electroplating Co. Site. OECI is no longer operating.

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 Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Oconomowoc Electroplating Co., Inc.*, DOJ Ref. #90–11–3–647 and #90–5–1–1–3440.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Federal Building Room 330, 517 East Wisconsin Ave., Milwaukee Wisconsin 53202; the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $3.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–15763 Filed 7–2–93; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF JUSTICE
## ANTITRUST DIVISION

### Notice Pursuant To The National Cooperative Research Act of 1984; Inter Company Collaboration For Aids Drug Development

Notice is hereby given that, on May 27, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Inter Company Collaboration For Aids Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: AB Astra, Sodertalje, Sweden; Bayer Aktiengesellschaft, Leverkusen, Germany; Boehringer Ingelheim Pharmaceuticals, Inc., Ridgefield, CT; Bristol-Myers Squibb Company, New York, NY; Bristol-Myers Squibb Holdings Limited, Ickenham, Uxbridge, England; Bristol-Myers Squibb, Brussels, Belgium; Bristol-Myers Squibb Canada, Inc., North York, Ontario, Canada; Bristol-Myers Squibb Pharmaceuticals Limited, Middlesex, England; Bristol-Myers Squibb S.A., Paris, France; Bristol-Myers Squibb G.m.b.H., Munich, Germany; Bristol-Myers Squibb S.p.A., Rome, Italy; E. R. Squibb & Sons, Inc., Princeton, NJ; E. R. Squibb & Sons Limited, Middlesex, England; Mead Johnson & Company, Evansville, IN; Squibb Corporation, Princeton, NJ; Burroughs Wellcome, Co., Research Triangle Park, NC; The Wellcome Foundation Limited, London, England; Burroughs Wellcome, Inc., Kirkland, Quebec, Canada; The Du Pont Merck Pharmaceutical Company, Wilmington, DE; Eli Lilly and Company, Indianapolis, IN; Glaxo Holdings plc, London, England; Glaxo Inc., Research Triangle Park, NC; Hoechst AG, Frankfurt, Germany; Hoechst-Roussel-Pharmaceuticals Inc., Somerville, NJ; Hoffmann-La Roche Inc., Nutley, NJ; F. Hoffmann-La Roche Ltd., Basel, Switzerland; Merck & Co., Inc., Whitehouse Station, NJ; Pfizer Inc., New York, NY; Sigma-Tau S.p.A., Rome, Italy; SmithKline Beecham plc, Brentford, Middlesex, England; Syntex, Palo Alto, CA and all other affiliates and subsidiaries of the above listed companies. The parties have agreed to the mutual exchange of scientific research and development data on HIV antiviral drugs and of HIV antiviral compounds for comparative and/or concomitant AIDS research and development. The parties may also develop standardized preclinical testing procedures, assays, and other standards and tests for HIV antiviral compounds.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93–15764 Filed 7–2–93; 8:45 am]

BILLING CODE 4410–01–M

## Bureau of Prisons

### Intent To Prepare Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Medical Center Complex (FMCC) at Fort Devens, Worcester County, MA

**AGENCY:** Federal Bureau of Prisons, Department of Justice.

**ACTION:** Notice of intent to prepare a Draft Environmental Impact Statement (DEIS); notice of intent to prepare an Environmental Assessment (EA) on the hospital and building #1677.

**Summary**

*Proposed Action*

The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal Medical Center Complex (FMCC) is needed in its system. A portion of Fort Devens, Massachusetts will be evaluated as a possible site for the FMCC. An Environmental Assessment will be prepared on the conversion of the existing hospital to accommodate 144 medical beds, the addition of an approximately 150 bed psychiatric wing, and use of Building #1677 as a warehouse. A Draft Environmental Impact Statement will be prepared on new construction which would include two detention housing units, with a combined capacity of approximately 320. The housing units will house United States Marshals' detainees and those inmates awaiting return to their parent institution after medical treatment. Also constructed will be a 256 bed low security unit to house the work cadre, a 512 bed minimum security satellite camp, and administrative space for staff. The Environmental Assessment will be incorporated into the DEIS by reference.

Additionally, the site would be used for road access, administration, programs and services, parking, and support facilities. Enclosed and secure exercise areas will be part of the facility.

In the process of evaluating the tract of land, several aspects will receive a detailed examination including utilities,

traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

*Alternatives*

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

*Scoping Process*

During the preparation of the DEIS, there will be numerous opportunities for public involvement. A public scoping meeting will be held at 7 p.m. on Tuesday, July 20, 1993, at the Fort Devens Officers' Club at Fort Devens. The meeting will be well publicized and will be held at a time that will make the meeting possible for the public and interested agencies or organizations to attend. A number of informal meetings have already been held, and other public meetings will be conducted by representatives of the Bureau of Prisons.

*DEIS Preparation*

Public notice will be given concerning the availability of the DEIS for public review and comment.

*Address*

Questions concerning the proposed action and the DEIS can be answered by: Natalie A. Landy, Site Selection Specialist, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 514–6470.

Dated: June 30, 1993.

**Patricia K. Sledge,**

*Chief, Site Selection and Environmental Review.*

[FR Doc. 93–15841 Filed 7–2–93; 8:45 am]

BILLING CODE 4410–05–M

## NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

### Public Meeting

**AGENCY:** National Commission on Judicial Discipline and Removal.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on July 15, 1993, in Washington DC. The First session of the meeting will convene at 9:30 a.m. and adjourn at approximately 12:30 p.m., and the second session of the meeting will convene at 1:30 p.m. and adjourn at approximately 5 p.m. Both sessions of the meeting will be held in the Main Conference Room of the Federal Judiciary Building at One Columbus Circle, NE.

**AUTHORITY:** This public meeting will be the eleventh one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President, the President *pro tem* of the Senate, the Chief Justice of the United States and the Conference of State Chief Justices. The National Commission, established by Public Law 101–650 (Title IV), is assigned three statutory duties. The first is to investigate ad study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges.

The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline and removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice, and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legisltive and administrative actions as are considered appropriate. The due date for the Commission's final report is August 1, 1993.

The Commission is not authorized to consider specific complaints against Federal judges.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, a good faith commitment to open meetings is incorporated in the Commission's By-laws.

**STATUS:** Both sessions of the meeting will be open to the public. A portion of either session of the meeting may be held in executive session to consider administrative matters involving privacy interests.

**MATTERS TO BE CONSIDERED:** This meeting will be the fourth in a series of Commission meetings designed to consider proposed recommendations for legislative or administrative action which may be incorporated into the Commission's final report.

**CONTACT PERSONS FOR FURTHER INFORMATION:** Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, Suite 690, 2100 Pennsylvania Ave., NW., Washington, DC, 20037–3202; or call (202) 254–8169.

**SUPPLEMENTARY INFORMATION:** Minutes of the meeting will be available for public inspection during regular working hours at the Commission office approximately thirty (30) working days following the meeting.

**William J. Weller,**

*Deputy Director:*

[FR Doc. 93–15813 Filed 7–2–93; 8:45 am]

BILLING CODE 6820–DB–M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Sherry Turpenoff, (202) 606–0950.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on June 3, 1993 (58 FR 31554). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1 and May 31, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

### Schedule A

No Schedule A authorities were established or revoked during May 1993.

### Schedule B

No Schedule B authorities were established or revoked during May 1993.

### Schedule C

*Action*

Confidential Assistant to the Special Assistant to the Director. Effective May 12, 1993.

Special Assistant to the Special Assistant to the Director. Effective May 12, 1993.

Confidential Assistant to the Special Assistant to the Director. Effective May 12, 1993.

Special Assistant to the Assistant Director of Vista/Student Community Service Programs. Effective May 25, 1993.

*Agency for International Development*

Special Assistant to the Administrator of the Agency for International Development. Effective May 11, 1993.

*Department of Agriculture*

Private Secretary to the Assistant Secretary for Congressional Relations. Effective May 5, 1993.

Private Secretary to the Under Secretary for Small Community and Rural Development. Effective May 13, 1993.

Confidential Assistant to the Administrator, Food and Nutrition Service. Effective May 13, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective May 17, 1993.

Staff Assistant to the Chief, Soil Conservation Service. Effective May 27, 1993.

Confidential Assistant to the Assistant Secretary for Natural Resources and Environment. Effective May 27, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective May 27, 1993.

Staff Assistant to the Secretary of Agriculture. Effective May 27, 1993.

Private Secretary to the Deputy Secretary. Effective May 27, 1993.

Staff Assistant to the Secretary of Agriculture. Effective May 27, 1993.

Confidential Assistant to the Administrator of the Foreign Agricultural Service. Effective May 28, 1993.

*Department of Commerce*

Confidential Assistant to the Deputy Assistant Secretary for White House Liaison. Effective May 4, 1993.

Confidential Assistant to the Deputy Executive Secretary. Effective May 5, 1993.

Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison. Effective May 11, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Investigations, International Trade Administration. Effective May 12, 1993.

Special Assistant to the Deputy Assistant Secretary for Economic Development, Economic Development Administration. Effective May 18, 1993.

Director, Office of Congressional Affairs to the Assistant Secretary for Communications and Information. Effective May 21, 1993.

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 24, 1993.

Confidential Assistant to the Under Secretary for Economic Affairs. Effective May 25, 1993.

Special Assistant to the Deputy Assistant Secretary for White House Liaison. Effective May 27, 1993.

*Department of Defense*

Paralegal Specialist to the Judge, United States Court of Military Appeals. Effective May 10, 1993.

Law Clerk to the Chief Judge, United States Court of Military Appeals. Effective May 17, 1993.

Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Atomic Energy. Effective May 27, 1993.

*Department of Education*

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 5, 1993.

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 5, 1993.

Confidential Assistant to the Deputy Secretary. Effective May 5, 1993.

Confidential Assistant to the Chief of Staff. Effective May 7, 1993.

Confidential Assistant to the Counselor to the Secretary. Effective May 7, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective May 7, 1993.

Confidential Assistant to the Deputy Secretary. Effective May 11, 1993.

Deputy Chief of Staff to the Chief of Staff, Office of the Secretary. Effective May 12, 1993.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective May 13, 1993.

Special Assistant to the Secretary of Education. Effective May 18, 1993.

Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective May 20, 1993.

Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 20, 1993.

Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 21, 1993.

Special Assistant to the Chief of Staff. Effective May 25, 1993.

Confidential Assistant to the Assistance Secretary for Intergovernmental and Interagency Affairs. Effective May 25, 1993.

*Department of Energy*

Executive Assistant to the Chairman of the Federal Energy Regulatory Commission. Effective May 11, 1993.

*Department of Health and Human Services*

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation. Effective May 5, 1993.

Congressional Liaison Specialist to the Deputy Assistant for Legislation (Congressional Liaison). Effective May 19, 1993.

Special Assistant to the Associate Commissioner for Public Affairs. Effective May 20, 1993.

Special Assistant for Policy to the Deputy Commissioner for Policy. Effective May 20, 1993.

Speechwriter to the Director of Speechwriting. Effective May 20, 1993.

Confidential Assistant (Advance) to the Director, Office of Advance. Effective May 20, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective May 21, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective May 26, 1993.

Special Assistant to the Chief of Staff. Effective May 26, 1993.

Senior Advisor to the Assistant Secretary for Planning and Evaluation. Effective May 26, 1993.

*Department of Housing and Urban Development*

Special Assistant to the Deputy Assistance Secretary for Single Family Housing, Federal Housing Commission. Effective May 17, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective May 17, 1993.

Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs. Effective May 17, 1993.

Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective May 17, 1993.

Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development. Effective May 17, 1993.

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective May 17, 1993.

Special Assistant to the Assistant Secretary for Housing Federal Housing Commissioner. Effective May 17, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective May 17, 1993.

Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations. Effective May 17, 1993.

Special Assistant to the Assistant Secretary for Administration. Effective May 17, 1993.

*Department of the Interior*

Special Assistant to the Assistant to the Secretary. Effective May 21, 1993.

Special Assistant to the Director, Bureau of Land Management. Effective May 21, 1993.

Special Assistant to the Director, Bureau of Land Management. Effective May 21, 1993.

Special Assistant to the Assistant Secretary of Policy, Management and Budget. Effective May 24, 1993.

*Department of Labor*

Intergovernmental Officer to the Director, Office of Intergovernmental Affairs. Effective May 12, 1993.

Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Special Assistant to the Secretary of Labor. Effective May 12, 1993.

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 12, 1993.

Special Assistant to the Deputy Secretary. Effective May 27, 1993.

*Department of State*

Staff Assistant to the Under Secretary for Management. Effective May 10, 1993.

Staff Assistant to the Secretary of State. Effective May 11, 1993.

Special Assistant to the Secretary of State. Effective May 11, 1993.

Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective May 11, 1993.

Staff Assistant to the Under Secretary for Management. Effective May 17, 1993.

Special Assistant to the Under Secretary for Management. Effective May 17, 1993.

Legislative Officer to the Under Secretary for Management. Effective May 21, 1993.

Special Assistant to the Legal Advisor. Effective May 24, 1993.

Protocol Officer (Visits) to the Foreign Affairs Officer/Assistant Chief of Protocol. Effective May 26, 1993.

Special Assistant to the Assistant Secretary for African Affairs, Bureau of African Affairs. Effective May 27, 1993.

*Department of Transportation*

Scheduling Assistant to the Chief of Staff. Effective May 3, 1993.

Scheduling Assistant to the Chief of Staff. Effective May 3, 1993.

Special Assistant to the Administrator, Federal Aviation Administration. Effective May 7, 1993.

Special Assistant to the Associate Administrator for Motor Carriers, Federal Highway Administration. Effective May 7, 1993.

Director, Executive Secretariat to the Secretary. Effective May 24, 1993.

*Department of the Treasury*

Confidential Assistant to the Commissioner of Customs. Effective May 4, 1993.

Staff Assistant to the Assistant Secretary of Economic Policy. Effective May 5, 1993.

Staff Assistant to the Deputy Assistant Secretary (Public Liaison). Effective May 20, 1993.

Deputy to the Assistant Secretary (Legislative Affairs). Effective May 27, 1993.

*Environmental Protection Agency*

Congressional Liaison Assistant to the Director of Congressional Liaison. Effective May 3, 1993.

*Federal Emergency Management Agency*

Supervisory Public Affairs Specialist to the Director, Federal Emergency Management Agency. Effective May 26, 1993.

*Federal Maritime Commission*

Administrative Assistant to the Chairman. Effective May 21, 1993.

*General Services Administration*

Congressional Liaison Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective May 27, 1993.

*U.S. International Trade Commission*

Staff Assistant to the Commissioner. Effective May 19, 1993.

*Interstate Commerce Commission*

Confidential Assistant to the Chairman of the Interstate Commerce Commission. Effective May 17, 1993.

*Office of the United States Trade Representative*

Private Sector Liaison to the Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison. Effective May 4, 1993.

Confidential Assistant to the Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison to the Assistant United States Trade Representative. Effective May 4, 1993.

Private Sector Liaison to the Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison. Effective May 4, 1993.

Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs. Effective May 7, 1993.

Confidential Assistant to the General Counsel. Effective May 11, 1993.

Supervisory Public Affairs Specialist to the Assistant United States Trade Representative for Public Affairs. Effective May 19, 1993.

Confidential Assistant to the United States Trade Representative. Effective May 19, 1993.

*Pension Benefit Guaranty Corporation*

Assistant Executive Director for Legislative Affairs to the Executive Director. Effective May 19, 1993.

Staff Assistant to the Deputy Executive Director. Effective May 20, 1993.

*United States Information Agency*

Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs. Effective May 27, 1993.

*United States Tax Court*

Secretary (Confidential Assistant) to the Judge, United States Tax Court. Effective May 20, 1993.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

[FR Doc. 93–15807 Filed 7–2–93; 8:45 am]

BILLING CODE 6325–01–M

## OFFICE OF THE U.S. TRADE REPRESENTATIVE

### Determination Under Section 305 of the Trade Agreements Act of 1979

Pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515) and the authority delegated to me by the President pursuant to Presidential Determination 93–29, I hereby identify Japan as a country that maintains in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States

businesses. Pursuant to section 305(g)(2) of the Trade Agreements Act of 1979, as amended, on behalf of the President, I hereby determine that immediate imposition of the sanctions specified in section 305(g)(1)(B) of the Act would harm the public interest of the United States, and accordingly postpone imposition of those sanctions so that they will take effect November 1, 1993.

**Reasons for Determination**

On April 30, 1993, in the Administration's annual report to the Congress under title VII of the Omnibus Trade and Competitiveness Act of 1988 (section 305 of the Trade Agreements Act of 1979, as amended), the Administration identified Japan for the discrimination in the procurement of construction, architectural and engineering services. Specifically cited was anticompetitive practices in Japan's construction market. Japan extensively uses the "designated bidder system," which routinely excludes U.S. bidders. Japan also maintains non-transparent administrative processes that provide an advantage to Japanese bidders at the expense of U.S. businesses. Further, Japan may have violated the 1991 Major Projects Arrangement (MPA) and has been unwilling to significantly improve the MPA and its coverage.

If the 60-day period of consultations specified in the statute is not successful in resolving U.S. concerns, the President is required to make this determination. Although the United States held consultations with the Japanese to address the practices cited in the title VII report, U.S. concerns have not yet been addressed by Japan in a satisfactory manner. Therefore, pursuant to the requirements of the statute, I have determined to identify Japan. However, the Government of Japan has agreed to negotiate with the U.S. to remove the discriminatory practices on the basis of a U.S. proposal. On this basis, I am postponing implementation of the sanctions until November 1, 1993.

This determination shall be published in the **Federal Register.**

**Michael Kantor,**

*U.S. Trade Representative.*

[FR Doc. 93–16005 Filed 7–2–93; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Modification of Sanctions With Respect to Japan Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Postponement until November 1, 1993 of implementation of prohibition of awards of contracts by federal agencies for products and services from Japan.

**SUMMARY:** On June 30, 1993, the United States Trade Representative announced that the effective date of the prohibition on awards of contracts by federal agencies for products and services of Japan, scheduled to go into effect on June 30, was being postponed until November 1, 1993 on the basis of an agreement by the Government of Japan to negotiate on the basis of a U.S. proposal.

**FOR FURTHER INFORMATION CONTACT:** Charles Lake, Office of Japan and China Affairs (202–395–5070), or Laura B. Sherman, Office of the General Counsel (202–395–3150), Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506.

**SUPPLEMENTARY INFORMATION:** On April 30, 1993, in its annual report to the Congress concerning procurement practices required by title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended), the Administration identified Japan as a country that maintains, in government procurement of construction, architectural and engineering services, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses. At that time, the U.S. requested consultations with the Government of Japan on ways to remove the discriminatory practices in the construction sector.

Title VII requires the President to formally identify a country as discriminating 60 days after the report is sent to Congress if the pattern or practice has not been resolved, at which time sanctions are automatically imposed. The President, however, has the authority to modify or restrict the sanctions if their imposition would harm the public interest. Since requesting consultations with Japan, the U.S. has been engaged in intensive negotiations with Japan at the highest levels. The Government of Japan has agreed to negotiate based on a U.S. proposal to significantly revise the Major Projects Arrangement and to address the identified discriminatory practices. On June 30, on the basis of this agreement and on behalf of the President, the U.S. Trade Representative announced the formal identification of Japan as a country that maintains, in government procurement of construction, architectural and engineering services, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses, and the postponement of imposition of title VII sanctions until November 1, 1993.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 93–16006 Filed 7–2–93; 8:45 am]

BILLING CODE 3190–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–32542; File No. SR–Amex–92–20]**

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Specialist Disclosure of Orders on the Book

June 29, 1993.

On June 26, 1992, the American Stock Exchange, Inc. ("Amex" 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 proposed rule change to amend Amex Rule 174 to permit a specialist, upon request of a member conducting a market probe, to disclose information regarding orders on his book which are at or near the prevailing quotation.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30946 (July 21, 1992), 54 FR 33375 (July 28, 1992). No comments were received on the proposal.

The Amex Rule 174 currently prohibits a specialist from disclosing to any person other than a Floor Official or other official of the Exchange any information regarding orders entrusted to him as a specialist, or the name of a bidder or offeror. However, a specialist, when requested, must disclose whether a bid or offer is in whole or in part for an account in which he has an interest,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

and the specialist is also permitted to respond to a request for the names of buying and selling member organizations in completed or partially executed transactions unless specifically directed to the contrary by the parties involved.

The Exchange believes that its marketplace will be made even more efficient if information regarding buying and selling interest at or near the prevailing quotation is made available to members conducting a market probe in the course of normal business. The Exchange, therefore, proposes to amend rule 174 to permit specialists to disclose such information, as well as the identity of the bidders or offerors that placed the orders unless expressly directed to the contrary by the broker who entered the order with the specialist. Amended rule 174, moreover, would require a specialist to make the same information available in a fair and impartial manner to any member who inquires. The Rule also would continue to require the specialist, when requested, to disclose whether a bid or offer is in whole or in part for the account in which the specialist has direct or indirect interest.

The Exchange states that the proposed amendment is similar to changes recently made to the comparable rule of the New York Stock Exchange ("NYSE").[3] Rather than requiring members entering orders with the specialist to specifically grant permission to the specialist to disclose the name of the bidder or offeror, as required by the NYSE rule, however, the Amex rule will permit the specialist to disclose such information unless specifically directed to the contrary by the entering broker.[4]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, by providing Exchange members and the investors they represent with more information with which to make trading decisions.

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 with the requirements of section 6(b)(5), 11A(a)(1)(C)(iii), and 11(b) of the Act.[5] Section 6(b)(5) requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 11A(a)(1)(C)(iii) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the Amex proposal, which will permit specialists to disclose information regarding buying and selling interest at or near the prevailing quotation, as well as the firm that placed the order (unless specifically prohibited by the bidder or offeror) to members conducting a market probe in the course of normal business, should further the principles of section 6(b)(5) as well as section 11A of the Act by broadening the availability of market information. At the present time, Amex specialists generally are prohibited from disclosing information regarding orders on their books. The Amex proposal will provide an opportunity for members conducting a market probe to access such information. As a result of the proposed rule change, specialists will be permitted to disclose market interest at or near the prevailing quotation as well as the identity of the firms that placed the orders. In this way, Amex members will have access to potentially valuable information with respect to the conditions of the market. Moreover, the rule protects against selective disclosure of market information by requiring the specialist to make the information available in a fair and impartial manner to all Amex members. The Commission, therefore, believes that the proposed rule change should promote the objectives of sections 6(b)(5) and 11A of the Act and enhance the ability of market participants to make informed investment decisions.

The Commission also believes that the proposal is consistent with section 11(b) of Act.[6] Section 11(b), among other things, prohibits a specialist or Exchange official from disclosing information with respect to specialist orders which is not available to all members of the Exchange to any person other than an official of the Exchange, a representative of the Commission, or a specialist who may be acting for such specialist. As noted above, the Amex proposal will make information regarding buying and selling interest at or near the prevailing market quotation available to all members conducting a market probe in the normal course of business on the Floor. At the same time, specialists would be prohibited from initiating the disclosure of such information, and thus could not favor certain Exchange members over others. In all other respects, the specialist would be required to maintain the confidentiality of orders on the books. The Commission, therefore, believes that the proposal provides a mechanism for the fair and impartial disclosure of information by the specialist in a manner that is neither anti-competitive nor discriminatory. Accordingly, because the modification to rule 174 would only permit the specialist to provide such information to all members of the Exchange on an equal basis, the Commission finds that the proposed amendment to rule 174 is consistent with section 11(b) of the Act.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–92–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15799 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32548; File No. SR–Amex–92–24]**

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change Relating to Cabinet Trading of Certain Equity and Derivative Securities

June 29, 1993.

On July 27, 1992, the American Stock Exchange, Inc. ("Amex" 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 proposed rule change to

[3] See Securities Exchange Act Release No. 29318 (June 17, 1991), 56 FR 28937 (June 25, 1992) (Order approving File No. SR–NYSE–89–02).

[4] See NYSE Rule 115. Under the rule, a specialist may provide information about buying or selling interest in the market at or near the prevailing quotation in response to a market "probe" by a member acting in the normal course of business on the Floor, as well as to any other member who inquires, but may not disclose the identity of any buyer or seller unless expressly authorized to do so.

[5] 15 U.S.C. 78f(b), 78k–1(a)(1)(C)(iii), and 78k(b) (1988).

[6] 15 U.S.C. 78k(b) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

amend Amex Rule 25 to clarify the circumstances under which a security may be designated for cabinet trading.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 31062 (August 20, 1992, 57 FR 38895 (August 27, 1992). No comments were received on the proposal.

Commentary .01 and .03 to Amex Rule 25 presently states that any equity or derivative security, other than a bond or option, may be a "designated" security for the purposes of cabinet trading if there is no bid or buying interest in the security at a price equal to or higher than the minimum price at which such security may trade on the Exchange (currently 1/256 of $1.00). The Exchange proposes to amend Commentary .01 and .03 of Amex Rule 25 to clarify that a such a security may be "designated" for cabinet trading if there is no bid or buying interest in the security at a price equal to or higher than the minimum transaction price that may be disseminated in a defined, computer-readable format through the Exchange's market data system ("MDS")[4] to the Consolidated Tape Association ("CTA") or the Consolidated Quotation System ("CQS").

As a technical matter, the current language concerning minimum price in Commentary .01 and .03 to Amex Rule 25 is not accurate. Transactions may be effected on the Exchange below 1/256 of $1.00, and such transactions may be reported to CTA through administrative messages. However, at the present time, only prices at or over 1/256 of $1.00 may be disseminated in a defined, computer-readable format by the Exchange's market data system to the facilities of CTA or CQS. Accordingly, this amendment will not effect any substantive change at all, but will more accurately describe the benchmark price which the Exchange is using to determine when a security is appropriate for Cabinet Trading.

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, with the requirements of section 6(b).[5] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade as well as remove impediments to perfect the mechanism of a free and open market. The Commission believes that the new language of Commentary .01 and .03 of Amex Rule 25 more accurately describes the pricing parameters under the rule which determines which securities can be subject to cabinet trading.

The Commission believes that this more accurate language should facilitate the operation of cabinet trading. The Commission has previously determined that cabinet trading is consistent with just and equitable principles of trade, so long as cabinet trading is primarily limited to inactive securities in which there is little market interest.[6] The Commission believes that the language of the present amendment merely clarifies the pricing parameters which define instances appropriate for cabinet trading. Further, the Commission believes that the language, as amended, is consistent with limiting cabinet trading to inactive securities in which there is little market interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–92–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15834 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[3] "Cabinet trading" provides an alternative to the traditional auction market, whereby the Exchange relieves a specialist of its market-making obligations in an essentially worthless security which lacks two-sided interest. Pursuant to Amex Rule 25, when the Exchange relegates such a "designated" security to a "cabinet," the security may be bid for or offered at $.001 per share, or $1.00 for 1,000 shares. The specialist effects transactions in cabinet securities by pairing-off such cabinet buy (sell) orders with cabinet sell (buy) orders.

[4] MDS is the Amex's system for the collection and reporting of market information operated by the Securities Industry Automation Corporation ("SIAC"), which processes and disseminates trade information to the Consolidated Tape.

[5] 15 U.S.C. 78f(b) (1988).

[6] See Securities Exchange Act Release No. 30803 (June 15, 1992), 57 FR 27822 (June 22, 1992) (order approving File No. SR–Amex–92–09, adopting Amex Rule 25 to establish a cabinet system for trading certain equity and derivative securities).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

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**[Release No. 34–32549; File No. SR–BSE–93–12]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Boston Stock Exchange, Inc. To Initiate a Six-Month Pilot Program to Permit Competing Specialists on the Floor of the Exchange

June 29, 1993.

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 7, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("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 BSE seeks to adopt a set of procedures as a pilot program to permit competing specialists on its floor.

### 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 includes 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 purpose of the proposed rule change is to permit competing specialists on the floor of the Exchange. The Exchange anticipates that such expanded competition would be beneficial to the investing public because greater competition on the floor will result in better prices for the customers. Under the proposed rule change there would be both a regular specialist and a competing specialist(s) in XYZ stock, whereas, currently there is only one specialist in that stock. Orders could be directed to either specialist based on each customer's independent decision, but all orders in XYZ stock would be executed in accordance with strict time priority. If the customer does not specify which specialist should receive the order, the order would be directed to the regular specialist. Once all limits at a price level are depleted, each specialist would be responsible for the market orders directed to him or her specifically.

All limit orders entrusted to each competing specialist and the regular specialist will be represented and executed strictly according to time priority as to the receipt of the order in the Boston Exchange Automated Communication Order-routing Network ("BEACON").[1] Thus, incoming market and marketable limit orders will automatically execute against limit orders on the books according to the order in which the limit orders were received in the system.[2] The regular specialist will be responsible for updating quotations; thus, all competitors must communicate their markets to the regular specialist and be responsible for their portion of the published bid and/or offer. Openings and reopenings shall be coordinated through the regular specialist to ensure that they are unitary. All ITS activity must be cleared through the regular specialist and only the regular specialist can input quotations to reflect the Boston market. Thus, to all other markets in the National Market System, there will be only one Boston market. Trading halts also will be coordinated through the regular specialist and any trading halt will apply to all competitors in a stock.

The Exchange is proposing this rule change as a six-month pilot program during which time participation would be limited to three competitors, including the regular specialist, in each stock and a maximum of ten stocks per competing specialist. However, the Market Performance Committee ("MPC") may approve, on a case-by-case basis, an increase in the number of stocks in which a specialist competes up to 20 stocks per applicant firm.[3] Thus, during the pilot program, the total number of stocks subject to competition will not exceed 360 of the 2211 stocks that the Exchange trades. Such limitations will enable the Exchange to evaluate the effectiveness of the program and to determine if any changes are necessary to improve the program and the Exchange's market-making function generally. The Exchange seeks to attract additional business, while at the same time providing adequate protection of customer orders sent to the Exchange and maintaining a true agency auction market.

The Exchange has adopted procedures to provide guidelines for the pilot program participants and for the Exchange in its administration of the program.[4] Any new competitive situation will be reviewed by the Exchange for the duration of the pilot program. Reports of specialists' dealings will be reviewed on a daily basis for the first four weeks and on a random basis thereafter. In addition, the subjective portion of the specialist performance evaluation program will reflect performance for the competing specialists during the pilot program, after which, the Exchange will incorporate the full evaluation program for measuring the performance of competing specialists.

Certain technical changes necessitated by the proposed pilot program have been made to Chapter XV(g) regarding the specialist's book to permit the competing specialists to see a summary of bids and offers at each price level in the subject stock. This will enable all competitors in a stock to know the combined market in that stock.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–12 and should be submitted by July 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15835 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

[1] The BSE's rules explain the BEACON system. See Chapter XXXIII, Section 1, BEACON in General.

[2] The BEACON system will view all of the limits on the various books as one centralized book for the purposes of order execution.

[3] The MPC would be responsible for reviewing the competing specialists' applications, as well as, deciding which specialists' would trade which stock.

[4] The text of the procedures for competing specialists is submitted as Exhibit 2 of the proposed rule change.

[Release No. 34-32541; File No. SR-CSE-92-06]

## Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Its By-Laws to Permit Simultaneous Service as Chairman and President

June 29, 1993.

On July 17, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" 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 proposed rule change to amend its Code of Regulations ("By-Laws") to permit the same individual to serve simultaneously as Exchange President and Chairman of the Board of Trustees ("Board").

The proposed rule change was published for comment in Securities Exchange Act Release No. 31045 (August 17, 1992), 57 FR 38077 (August 21, 1992). No comments were received on the proposal.

Article VII of the CSE's By-Laws states that the officers of the Exchange shall be a Chairman of the Board, President, Secretary, Treasurer and any other officers as appointed by the Board. Article VII of the Exchange By-Laws specifies that any person may hold more than one office, except that the same person may not hold the office of both President and Chairman of the Board and the Secretary may not hold either the office of President or Chairman of the Board.

The Exchange proposes to amend Article VII to permit the same individual to serve as Exchange Chairman and President. The CSE argues that although Article VII currently prohibits this, the actual burden to the Exchange of a particular, qualified individual not being able to hold both positions outweighs any potential advantages of separating the office.[3] The Exchange states that apart from customary distinctions, the principal distinction between the powers of the President and the Chairman specified in the Exchange By-Laws is that only the Chairman is given authority to appoint committee members (with Board approval), fill committee vacancies and remove committee members.[4] The CSE believes that there is little potential problem in conferring these committee-related powers to the individual serving as President, because even under the proposed amendment no individual could fill both posts without the consent of the Board.[5] The CSE notes that the proposed rule change was approved by membership vote on July 10, 1992.[6]

The CSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

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, with the requirements of sections 6(b) (1) and (5) of the Act.[7] Section 6(b)(1) requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(5) of the Act requires, among other things, that exchange rules be designed to protect investors and the public interest.

The Commission believes that the proposed rule change should further the objectives of sections 6(b)(1) and 6(b)(5) because the proposal should streamline the organization and governance of the Exchange by providing the CSE with additional flexibility in selecting its Chairman and President. In this regard, the Commission notes that although CSE currently has a Chairman, the CSE has been operating without a President of the Exchange. For the reasons set forth below, the Commission believes that it is reasonable for CSE to determine, based upon the experience and qualifications of a particular individual and the needs of the Exchange, that the governance process of the Exchange would be enhanced by the ability of one individual to serve simultaneously as both Chairman and President.

Article VII, Section 5 of the CSE By-Laws describes the powers and duties of Exchange officers as those powers and duties which customarily pertain to the respective office and such further powers and duties as from time to time may be conferred by the Board.[8] As a general matter, the CSE Board currently allows its Chairman and President to perform similar duties. For example, either the President or Chairman may call a special meeting of the membership[9] or a special meeting of the Board.[10] In addition, either the Chairman or President may suspend an Exchange member or remove the suspension of an Exchange member.[11] Furthermore, the Chairman or President may summarily limit or prohibit any person from access to services offered by the Exchange.[12]

The authority of the President and Chairman also is constrained by the Board. As noted above, under CSE's rules, the primary difference between the duties and powers of the Chairman and the President is found in the authority to appoint CSE committee members; only the Chairman may appoint members of the CSE's committees.[13] The Chairman's committee appointments, however, are subject to Board approval.[14] In addition, the Board appoints all officers of the Exchange.[15] Accordingly, the decision to allow an individual to serve as both President and Chairman would be made by the CSE Board. Moreover, any officer, including the Chairman and the President may be removed by the Board, with or without cause, by an affirmative vote of a majority of Board members.[16] Based on the governance structure described above, the Commission believes that, because the CSE's Board places significant checks and balances on the authority of the Chairman and the President, it is consistent with

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992.

[4] See CSE By-Law Article VI, Section 1.2.

[5] Pursuant to CSE By-Law Article VII, Section 2, the Chairman and the President are both appointed by the Board.

[6] The CSE adds that the proposed rule change was approved by the Exchange's Executive Committee on June 17, 1992 and ratified by the Board on July 22, 1992. Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992. This completes the required approval necessary for a CSE By-Law change. See CSE By-Law Article IX, Section 1.

[7] 15 U.S.C. 78f(b) (1) and (5) (1988).

[8] The Board is composed of the Exchange President; two proprietary members with certificates, or executive officers of proprietary members with certificates who are Designated Dealers in the CSE's National Securities Trading System; one proprietary member with certificate, or an executive officer of a proprietary member with certificate, who conducts a nonmember public customer business on the Exchange; the Chairman of the Chicago Board Options Exchange ("CBOE"); four CBOE members or executive officers of CBOE member organizations; and three representatives of issuers and investors. See CSE By-Law Article V, Section 1.1.

[9] See CSE By-Law Article II, Section 10.2.

[10] See CSE By-Law Article V, Section 5.

[11] See CSE Rules, Chapter VII, Rule 7.1 (a) and (c).

[12] See CSE Rules, Chapter VII, Rule 7.6.

[13] See CSE By-Law Article VI, Section 1.2, 2.1, and 3.2.

[14] *Id.*

[15] See CSE By-Law Article VII, Section 2.

[16] See CSE By-Law Article VII, Section 3.

section 6(b) of the Act of the Board to permit and individual to serve simultaneously as Chairman and the President of the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CSE–92–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15800 Filed 7–2–93; 8:45 am]

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**[Release No. 34–32535; File No. SR–MSTC–93–04]**

## Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change to Revise By-Laws Regarding Indemnification of Directors, Officers, and Employees

June 28, 1993.

On February 8, 1993, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–93–4) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change revises various MSTC By-Laws that relate to indemnification of directors and officers. The Commission published notice of the proposed rule change in the Federal Register on March 17, 1993.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description

Under the proposal, MSTC is amending Article VI of its By-Laws regarding indemnification of MSTC directors, officers, and employees. Specifically, under the proposal MSTC deletes current section 1 of Article VI of its By-Laws relating to indemnification of MSTC's officers, directors, and administrative employees and replaces it with four separate sections relating to indemnification. New section 1 indemnifies directors and officers to the fullest extent possible under Illinois law for potential civil or criminal liability for actions taken as directors or officers of MSTC. New section 2 expresses that Article VI is deemed to be a contract between MSTC and each director or officer. New section 3 relates to the indemnification of employees and agents of MSTC who, under the section, may be indemnified "to the extent authorized at any time or from time to time by the board of directors." New section 4 expresses that the rights of indemnification provided in Article VI shall not be deemed exclusive of any other rights to which those indemnified may be entitled. That section also expresses that Article VI rights of indemnification shall inure to the benefit of the heirs, executors, and administrators of the protected person.

The approach used in the proposed rule change is similar to the approach used in the comparable Midwest Stock Exchange, Inc. ("MSE") and Midwest Clearing Corporation ("MCC") By-Laws where indemnification of directors and officers is permitted to the fullest extent permitted by Delaware law.[3]

### II. Discussion

The Commission believes the proposed rule change is consistent with the Act and in particular with section 17A(b)(3)(C)[4] of the Act in that it helps to ensure the fair representation of shareholders and participants in the administration of MSTC. By ensuring that directors and officers are fully indemnified for actions they take within the scope of their employment, the proposal should guarantee that qualified candidates are not discouraged from becoming MSTC directors or officers for fear of being held liable for actions they may take as directors or officers of MSTC.[5] This should enable MSTC to maintain a variety of qualified candidates from which to choose directors, officers, and other employees, and in particular should help MSTC retain directors who are fairly representative of MSTC's shareholders and participants.

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with section 17A of the Act, and with the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–MSTC–93–4) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15802 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32532; File No. SR–OCC–93–14]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

June 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 23, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through June 30, 1994.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the Commission's previous temporary approval of OCC's modifications to its rules setting forth the standards for letters of credit deposited with OCC as a form of margin.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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

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[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31978 (March 11, 1993), 58 FR 14453.

[3] MSE and MCC are both Delaware corporations. See Article X of the MSE Constitution and Article VI of the MCC By-Laws.

[4] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[5] The Commission recognizes that MSTC's proposal may raise an issue regarding the scope of MSTC's indemnification of its officers, directors, and employees in pending litigation. In this regard, MSTC has represented that the proposal should be viewed as a "clarification and streamlining of the existing By-Law" rather than as an effort to expand the scope of its current indemnification provisions. Letter from Larry A. Mallinger, Associate Counsel, MSTC, to Richard C. Strasser, Attorney, Division, Commission (June 24, 1993).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

in Item IV below. OCC 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*

In August 1991, February 1992, April 1992, July 1992, and November 1992, OCC filed with the Commission rule changes which proposed to modify the standards for letters of credit deposited with OCC as a form of margin.[2] The Commission granted approval of each of those filings on an accelerated and temporary basis.

This filing again proposed to make permanent the Commission's temporary approval. Like the previous filings, this filing proposes several modifications to Rule 604, which sets forth the standards for acceptable forms of collateral deposited with OCC as margin. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring demands upon letters of credit, letters of credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, the letters of credit must expire on a quarterly basis. Fourth, OCC included language to make explicit its authority to draw upon letters of credit at any time, whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default, if OCC determines that such draws are advisable to protect OCC, other Clearing Members, or the general public.[3]

In the interim since its original letter of credit filing, OCC has received no adverse comments or complaints from any of its Clearing Members, Banks, or other interested parties with respect to the modifications to Rule 604 or to the implementation of the revised letter of credit standards. Accordingly, OCC now requests that the Commission grant permanent approval of those revisions.

OCC believes the proposed rule change is consistent with the requirements of section 17A of Act, as amended.[4] Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission believes that the proposal is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(F) of the Act.[5] That section requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible. The revised standards should make letters of credit deposited as a form of margin more liquid instruments and, consequently, should permit OCC to more safely rely upon such letters of credit. Because the revised standards will induce letter of credit issuers to reexamine Clearing Members' financial conditions every three months rather than annually as under the prior standards, the financial conditions of Clearing Members electing to deposit letters of credit as margin may be assessed more frequently thereby facilitating the discovery of any adverse developments in a more timely manner. In addition, since the letters of credit will be irrevocable, issuers of letters of credit will no longer be able to revoke letters of credit at times when the Clearing Members most need credit facilities (*e.g.*, when a Clearing Member is experiencing financial difficulties or during times of market volatility). By approving the proposed rule change on a temporary basis through June 30, 1994, OCC, the commission, and other interested parties will be able to assess further, prior to permanent Commission approval, any effects these revised standards have on letter of credit issuance and on margin deposited at OCC.[6]

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it is desirable that the proposed rule change be approved before the expiration of the Commission's previous order granting temporary approval of these modifications to the letter of credit standards. By approving this proposed rule filing before expiration of the prior temporary approval order, the changes that have been implemented pursuant to the temporary approval order may remain in place pending permanent approval.

**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 in the Commissions Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should

[2] Securities Exchange Act Release Nos. 29641 (August 30, 1991), 56 FR 46027 [File No. SR–OCC–91–13] (order temporarily approving proposed rule change through February 28, 1992); 30424 (February 28, 1992), 57 FR 8160 [File No. SR–OCC–92–06] (order temporarily approving proposed rule change through May 31, 1992); 30763 (June 1, 1992), 57 FR 24284 [File No. SR–OCC–92–11] (order temporarily approving proposed rule change through August 31, 1992); 31126 (September 1, 1992) 57 FR 40925 [File No. SR–OCC–92–19] (order temporarily approving proposed rule change through December 31, 1992); and 31614 (December 17, 1992) 57 FR 61142 [File No. SR–OCC–92–37] (order temporarily approving proposed rule change through June 30, 1993).

[3] For a detailed discussion of the modifications to OCC's rules governing letters of credit deposited as margin, refer to Securities Exchange Act Release No. 29641, *supra* note 2.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] The Commission and OCC currently are studying concentration limits on letters of credit deposited as margin. The Division believes that clearing agencies that accept letters of credit as margin deposits or clearing fund contributions should limit their exposure by imposing concentration limits on the use of letters of credit. Generally, clearing agencies impose limitations on the percentage of an individual member's required deposit or contribution that may be satisfied with letters of credit, limitations on the percentage of the total required deposits or contributions that may be satisfied with letters of credit by any one issuer, or some combination of both. OCC has no concentration limits on the use of letters of credit issued by U.S. institutions.

refer to the file number SR–OCC–93–14 and should be submitted by July 27, 1993.

## V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

*It is therefore ordered,* under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–14) be, and hereby is, approved through June 30, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15803 Filed 7–2–93; 8:45 am]

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**[Release No. 34–32534; File Nos. SR–OCC–92–28 and SR–ICC–92–5]**

## Self-Regulatory Organizations; The Options Clearing Corporation and The Intermarket Clearing Corporation; Order Approving Proposed Rule Changes Relating to Trilateral Cross-Margining With the Chicago Mercantile Exchange

June 28, 1993.

On September 22, 1992, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") each filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File Nos. SR–OCC–92–28 and SR–ICC–92–5) that would enable OCC and ICC to enter into a cross-margining agreement with the Chicago Mercantile Exchange ("CME") to accommodate the existing bilateral cross-margining program between OCC and CME, to establish a bilateral cross-margining program between ICC and CME, and to establish a trilateral cross-margining program among OCC, ICC, and CME. The Commission published notice of these proposals in the **Federal Register** on December 3, 1992.[2] OCC and ICC filed technical amendments to their proposals on March 10, 1993,[3] on May 12, 1993,[4] and on June 14, 1993, that did not require republication of notice.[5] No public comments were received. For the reasons discussed below, the Commission is approving the proposals.

## I. Description

### *A. Background*

Pursuant to the proposals, OCC, ICC, and CME will enter into a Cross-Margining Agreement ("Agreement") to accommodate the existing bilateral cross-margining ("X–M") program between OCC and CME, to establish a bilateral X–M program between ICC and CME, and to establish a trilateral X–M program among OCC, ICC, and CME.[6] Under the OCC/CME bilateral X–M program, participating clearing firms can cross-margin certain OCC-cleared stock index options with certain CME-cleared stock index futures and options on those futures.[7] Under the ICC/CME bilateral X–M program, participating clearing firms will be able to cross-margin certain ICC-cleared stock index futures and options on those futures with certain CME-cleared stock index futures and options on those futures.[8] Under the OCC/ICC/CME trilateral program, participating clearing firms will be able to cross-margin certain OCC-cleared stock index options, certain ICC-cleared stock index futures and options on those futures, and certain CME-cleared stock index futures and options on those futures.[9] All three X–M programs include positions carried in proprietary accounts and positions carried by participating Clearing Members for market professionals in non-proprietary accounts.[10]

The X–M programs between ICC and CME and among OCC, ICC, and CME will operate in basically the same way as the existing OCC/CME program.[11] Thus, the Agreement governing these programs is based on the existing Amended and Restated Cross-Margining

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31499 (November 23, 1992), 57 FR 57258.

[3] Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (March 9, 1993).

[4] Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (May 10, 1993).

[5] Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 14, 1993).

[6] Under the proposal, the current OCC/CME bilateral X–M program will be phased out in favor of the trilateral program. Both OCC and ICC have filed proposals to restructure the existing OCC/ICC X–M program into a program modeled after the OCC/CME bilateral X–M program. [File Nos. SR–OCC–93–07 and SR–ICC–93–04]. Until approval of such proposals is granted, the OCC/ICC program will continue to operate as a program distinct from the trilateral program. Conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (March 5, 1993). Currently, three Clearing Members participate in the OCC/ICC X–M program, one of which is expected to transfer into the trilateral program when it becomes operational. Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 19, 1993).

[7] For a discussion of contracts eligible for this X–M program, see *infra* note 9.

[8] For a discussion of contracts eligible for this X–M program, see *infra* note 9.

[9] Contracts eligible for the X–M programs are: (1) OCC-cleared put and call options on the Standard & Poor's ("S&P") 500 Index, S&P 100 Index, Major Market Index, New York Stock Exchange ("NYSE") Composite Index, Financial News Composite Index, Institutional Index, Financial Times 100 Index, S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, and Wilshire Small Cap Index; (2) ICC-cleared NYSE Composite Index futures and put and call options on NYSE Composite Index futures; and (3) CME-cleared S&P 500 futures, put and call options on S&P 500 futures, Financial Times 100 Index futures, put and call options on Financial Times 100 Index futures, S&P MidCap 400 futures, put and call options on S&P MidCap 400 futures, and Russell 2000 Index futures and put and call options on Russell 2000 Index futures.

Eligible contracts fall into three product groups. Those product groups consist of broad-based indexes, small cap indexes, and the Financial Times 100 Index. The broad-based product group includes options, futures, and options on futures where the underlying instrument is the S&P 100 Index, S&P 500 Index, Major Market Index, New York Stock Exchange Composite Index, Financial News Composite Index, and Institutional Index. The small cap product group includes options, futures, and options on futures where the underlying instrument is the S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, and Wilshire Small Cap Index. Options, futures, and options on futures where the underlying instrument is the Financial Times 100 Index are in a product group by themselves. Within each product group, each index will constitute an individual class group. Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 19, 1993).

Only contracts within the same product group may be cross-margined against each other. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (June 16, 1993).

[10] Market professionals include (1) market-makers, specialists, and registered traders as defined in OCC rules; (2) floor traders and off-floor traders as defined in ICC rules; and (3) CME members or firms owning CME memberships to the extent they are trading for their own accounts and not for the accounts of others.

[11] Under the OCC/CME arrangement, OCC and CME effectively share control of Clearing Member options and futures positions. OCC maintains control of OCC-cleared options, which are held in a special X–M account, and CME maintains control of CME-cleared futures and options on futures, which also are held in a special X–M account. Clearing Members electing to participate in the X–M arrangement must grant OCC and CME cross-liens on options positions maintained at OCC and on futures positions maintained at CME. Funds paid by Clearing Members or generated by liquidating positions are maintained in a joint OCC/CME bank account. OCC and CME exchange position data and coordinate collection of margin deposits on those positions and share any losses resulting from position liquidations.

For a more detailed description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–1] (order approving OCC/CME non-proprietary, market professional cross-margining) and 27296 (September 26, 1989), 54 FR 41195 [File No. SR–OCC–89–01] (order approving OCC/CME proprietary cross-margining).

[7] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

Agreement between OCC and CME ("OCC/CME Amended Agreement") but with modifications as necessary to accommodate the ICC/CME bilateral and the OCC/ICC/CME trilateral programs. Several of the more significant differences between the Agreement and the OCC/CME Amended Agreement are discussed below as are corresponding amendments to OCC's and ICC's by-laws and rules.[12]

*B. Significant Differences between Agreements*

Section 1 of the Agreement adds certain definitions and modifies others to conform them to the proposed programs. The Agreement defines a "Carrying Clearing Organization" as any clearing organization that carries one of a particular set of X–M Accounts.[13] The term reflects that under the Agreement, a set of X–M Accounts might be carried either by all three or by only two clearing organizations. The term "Joint Clearing Member" refers to a Clearing Member that is a member of each Carrying Clearing Organization. The term "Affiliated Clearing Members" refers to two Clearing Members that are Affiliates of one another where each one is a Clearing Member of at least one Carrying Clearing Organization and where between them they have at least one Clearing Membership at each Carrying Clearing Organization. The definition of "Affiliate" has been revised to focus on the relationship between the Affiliates rather than on the status of an account carried by one Affiliate for the other as was the focus in the OCC/CME Amended Agreement.[14]

Section 2 of the Agreement provides that, subject to the approval of the Carrying Clearing Organization, each Joint Clearing Member and pair of Affiliated Clearing Members may establish one set of Proprietary X–M Accounts and one set of Non-Proprietary X–M Accounts. Each set of X–M Accounts may consist of either two accounts or three accounts.[15] As security for obligations of Joint Clearing Members or pairs of Affiliated Clearing Members to the Carrying Clearing Organizations, account agreements will continue to allow Carrying Clearing Organizations to have liens on and security interests in all positions in X–M Accounts, all margin held in respect thereof, and all proceeds of any of the foregoing.[16] As with the existing OCC/CME X–M program, security interests in or liens on positions in Non-Proprietary X–M Accounts, however, secure only obligations arising from such accounts.

Section 2 also provides that each Joint Clearing Member or pair of Affiliated Clearing Members must designate one of its Carrying Clearing Organizations as its Designated Clearing Organization ("DCO").[17] Paragraph (b) of Section 2 also provides that in the case of Affiliated Clearing Members, one Clearing Member, which is a Clearing Member of the DCO, shall be appointed by the other Clearing Member to act as the agent for purposes of interacting with the DCO. This amendment is intended to facilitate participation in the X–M programs by Affiliated Clearing Members.

Section 3 of the Agreement provides for Clearing Members to designate either set of X–M Accounts (*i.e.*, proprietary or non-proprietary) or both as X–M Pledge Accounts.[18] As with the OCC/CME Amended Agreement, Section 3 contains language stating that no X–M Pledge Account may be established until all necessary regulatory approval is obtained.

Section 5 provides that the Carrying Clearing Organizations jointly will determine the margin requirement for each set of X–M Accounts carried by them[19] but that any Carrying Clearing Organization may elect to use the margin system of another Carrying Clearing Organization for purposes of calculating margin.[20] An oral agreement between two Carrying Clearing Organizations to use the margin system of one of the two must be made over a recorded telephone line and promptly confirmed in writing. This provision is intended to protect the parties to the oral agreement.

Section 6 of the Agreement sets forth that cash, U.S. Treasury Securities, letters of credit, and certain common stock are acceptable forms of initial margin.[21] While the forms of initial margin are unchanged from the OCC/CME program, the Agreement states that deposits of certain common stock will be valued at 70% of current market value or at such lesser percentage as required by the Commission and CFTC.[22]

Section 7 describes the daily settlement procedures for sets of X–M Accounts in the bilateral and trilateral programs.[23] The Agreement differs from the OCC/CME Amended Agreement in

[12] Corresponding amendments also were made to the various agreements describing the rights and responsibilities of Clearing Members with regard to their participation in the X–M programs.

[13] The term "set" has been substituted for the term "pair" when speaking of X–M Accounts to accommodate both trilateral and bilateral X–M programs.

[14] The definition of Affiliate set forth in the OCC/CME Amended Agreement states that each entity must be a person whose account with the other entity would not be the account of a customer. This definition originally was adopted in the context of proprietary cross-margining and was intended to ensure that the commingling of funds beneficially owned by each of the pair of Affiliates in a proprietary X–M account was consistent with Commission and Commodity Futures Trading Commission ("CFTC") rules and regulations. However, there is no legal necessity for this definition to focus on the status of an account (*i.e.*, proprietary or customer) carried by one Affiliate for the other. Therefore, to eliminate confusion, the new definition of Affiliate is based on the relationship of the entities (*i.e.*, control of one entity over the other or the entities being under common control). Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Associate Director, Division, Commission (July 7, 1992).

[15] Each set of X–M Accounts, proprietary or non-proprietary, will consist of either (1) a X–M Account at CME and a X–M Account at either OCC or ICC or (2) a X–M Account at CME, OCC, and ICC.

[16] OCC Rule 701 has been amended to provide that as security for the obligations of a Clearing Member, OCC and the Carrying Commodity Clearing Organization ("CCO"), rather than the Participating CCO, jointly will have a lien on and security interest in: (1) All contracts purchased or carried in any set of X–M accounts; (2) all cash, securities, and property deposited or held in respect thereof; and (3) all proceeds of any of the foregoing. With regard to Proprietary X–M Accounts, this lien or security interest will apply to all obligations of a Clearing Member to OCC and the Carrying CCO, regardless of whether the obligations arose from the X–M Accounts.

[17] For operational purposes, OCC is the DCO for all Clearing Members. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, and Richard C. Strasser, Attorney, Division, Commission (March 2, 1993). Designation of the DCO is provided for by new ICC Rule 516.

[18] X–M Pledge Accounts are those that a Clearing Member has granted a security interest in to a bank as security for loans extended by the bank to that Clearing Member.

[19] New ICC Rule 517 states that the amount of margin shall be determined by ICC and the Carrying Clearing Organization(s) in accordance with the applicable X–M agreement and sets forth ICC's authority to require the deposit of additional margin.

[20] OCC, ICC, and CME have agreed that OCC, as the DCO for all participating Clearing Members, will calculate all margin requirements under the X–M programs.

[21] New ICC Rule 518 describes the acceptable forms of margin for the X–M program.

[22] Currently, common stock which meets the margin eligibility requirements of OCC Rule 604(d) and is deposited as margin with OCC is valued at 50% of current market value. OCC has filed a proposed rule change with the Commission whereby eligible common stock could be valued at 70% of current market value. Refer to Securities Exchange Act Release No. 31169 (September 10, 1992), 57 FR 43041 (notice of proposed rule change relating to valuation rate of securities deposited as margin). Until the Commission approves that proposal, common stock deposited as margin will be valued at no more than 50% of current market value.

[23] New ICC Rule 519 describes the daily settlement procedures for the X–M program. To facilitate the settlement process, ICC has designated OCC as its agent for purposes of receiving and approving or disapproving settlement instructions. ICC must give reasonable advance written notice to OCC and CME if it decides to revoke such designation.

its description of the procedures OCC will follow for issuing settlement instructions to a X–M Clearing Bank and in its inclusion of procedures ICC will follow in issuing such instructions. In addition, under the Agreement a clearing organization's issuance of an instruction to a X–M Clearing Bank not to proceed with a settlement instruction will constitute a failure to perform a material obligation where the clearing organization is not a Carrying Clearing Organization with respect to the particular X–M Accounts for which such instruction was issued.[24] Section 7(j) provides that non-proprietary cash settlement funds will not be paid to a Clearing Member until the Clearing Member has completed all of its other settlement obligations with respect to all other non-proprietary accounts carried for it at the Carrying Clearing Organizations. Moreover, no proprietary cash settlement funds will be paid to a Clearing member until that Clearing Member has completed all of its other settlement obligations with the Carrying Clearing Organizations.

Section 8 describes procedures for the close-out of X–M Accounts.[25] Although many basic procedures to be followed by the Carrying Clearing Organizations in liquidating the X–M Accounts remain the same as those described in the OCC/CME Amended Agreement, there are certain important differences between the two agreements regarding allowable reimbursements from the non-proprietary liquidating settlement account and allocation of surpluses or losses among the three clearing organizations.

First, a provision has been added to section 8(d) of the Agreement which provides that funds held in the Non-Proprietary Liquidating Account may be used to reimburse the Proprietary Liquidating Account to the extent that proceeds from any Proprietary X–M Account were used, as provided for in Section 8(b) of the Agreement, to offset a liquidating deficit in any Non-Proprietary X–M Account.

Second, Section 8(d) of the Agreement was revised to provide that (1) CME will be entitled to receive or retain 50% of the surplus and either OCC or ICC (whichever is the Carrying Clearing Organization) will be entitled to the remaining 50% of the surplus or (2) CME will be entitled to receive or retain 50% of the surplus and OCC and ICC (if both are Carrying Clearing Organizations) will be entitled to the remaining 50% of the surplus as OCC and ICC may agree in writing among themselves for application against any "other losses."[26] Any surplus retained by or returned to CME and OCC and/or ICC shall not exceed their respective other losses from the defaulting Clearing Member.

Third, Section 8 has been revised to clarify that in the event that the liquidation of a defaulting Clearing Member results in a shortfall, CME will bear 50% of the shortfall while OCC and ICC will bear the remaining 50% as allocated between themselves by agreement.[27] If either OCC or ICC is not a Carrying Clearing Organization with respect to the defaulting Clearing Member, however, that entity will not be required to contribute to eliminate the shortfall.[28] Section 8(f) has been amended to make explicit that each clearing organization in accordance with its rules will apply its clearing or guarantee fund and exercise any rights to make additional assessments against Clearing Members to the extent necessary to meet its obligations to the other clearing organizations with respect to shortfalls. New paragraph (i) requires the clearing organizations to review annually formulas for allocating surpluses and losses.

Section 10 has been revised to clarify the right of an indemnitor to control any legal defenses available to it and any of the indemnified parties. Section 10 in the Agreement differs from section 10 of the OCC/CME Amended Agreement in that it provides that an indemnitor will pay for one separate firm of attorneys for each indemnified party where the indemnified parties are two clearing organizations and the legal defenses available to one are different from or in addition to those available to the other.

A new paragraph (c) has been added to the termination provisions of section 12 of the Agreement. Under that paragraph, if either OCC or ICC establishes a termination date, then the Agreement and X-M program shall remain in effect as to the non-terminating parties. This provision is intended to eliminate the need for non-terminating clearing organizations to execute a new X-M agreeement.

Subparagraph (vi) of section 14(a) reflects that a clearing organization must notify the others of a disciplinary action taken by such clearing organization's governing body, or committee or subcommittee thereof, against a Clearing Member unless the disciplinary action involves an appeal from an administrative fine. A new paragraph (c) has been added to reflect the agreement of OCC, ICC, and CME to inform one another on a monthly basis of the total size and aggregate amount of required contributions to its clearing or guarantee fund. This paragraph expands the scope of information available to the clearing organizations regarding the ability of each to meet its obligations under section 8 (Suspension and Liquidation of Clearing Member) of the X-M Agreement.

## II. Discussion

The Commission believes that OCC's and ICC's proposals are consistent with the Act and in particular with Section 17A thereunder.[29] As discussed below, the proposal will facilitate the development of linked or coordinated clearing facilities for intermarket positions, will promote the prompt and accurate clearance and settlement of securities transactions, and appears to be designed to safeguard securities and funds.[30]

[24] *See* Agreement section 7(b). For instance, if ICC, which was not the Carrying Clearing Organization with regard to a particular set of X–M Accounts, nonetheless were to direct the X–M Clearing Bank not to proceed with an instruction involving those accounts, then ICC would have failed to perform a material obligation under the Agreement and would be liable to the other clearing organizations for any loss, cost, or expense they incurred as a result of ICC's action.

[25] New ICC Rule 520 discusses procedures for closing out the X–M accounts of defaulting Clearing Members.

[26] Section 8(d) of the OCC/CME Amended Agreement provides for both OCC and CME to receive up to 50% of the surplus in a Proprietary Liquidating Account to be applied against any losses whatsoever resulting from defaults in other obligations of a defaulting Clearing Member.

OCC and ICC will allocate their share of any such surplus between themselves on a proportional basis based on each one's percentage of the total number of contracts in the X-M Account. File Nos. SR–OCC–92–28, nn. 8 & 9 and SR–ICC–92–05, nn. 9 & 10.

[27] OCC Rule 707(b) was amended to reflect that any shortfall resulting from the liquidation of sets of X-M Accounts would be allocated between or among OCC and the Participating CCOs in accordance with the applicable Participating CCO Agreement. For a discussion of the Participating CCO Agreement, refer to OCC By-Laws Article VI, § 24.

[28] If both OCC and ICC are Carrying Clearing Organizations, they will allocate their share of any such shortfall between themselves on a proportional basis based on each one's percentage of the total number of contracts in the X-M Account.

[29] 15 U.S.C. 78q–1 (1988).

[30] For example, Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible. 15 U.S.C. 78q–1(b)(3)(F) (1988).

See also Section 17A(a)(2)(A)(ii). 15 U.S.C. 78q–1(a)(2)(A)(ii) (1990). Congress added this section to the Act by enacting the Market Reform Act of 1990. Pub. L. No. 101–432, 104 Stat. 963 (1990). This section directs the Commission to use its authority under the Act "to facilitate the establishment of linked or coordinated facilities for clearance and

As with other X–M arrangements, the current proposal links and coordinates the various clearance and settlement facilities of OCC, ICC, and CME through shared management of risks associated with the Clearing Members' intermarket portfolios and through information sharing regarding the financial health of participating joint and affiliated members.[31] This arrangement is a significant improvement over the past practice where individual clearing organizations were required independently to manage the risk of separate components of a Clearing Member's portfolio of options and futures positions. Thus, cross-margining programs, such as those proposed here, facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities options, futures, and options on futures in furtherance of the goals of section 17A(a)(2)(A)(ii) of the Act.[32]

Moreover, since it granted approval of the first X–M program in 1988,[33] the Commission repeatedly has found that X–M programs are consistent with clearing agency responsibilities under Section 17A of the Act. As the Commission previously noted, X–M programs, among other things, tend to enhance Clearing Member and systemic liquidity both in times of normal trading and in times of stress.[34] Under routine trading, Clearing Members who participate in a X–M program have lower initial margin deposits. Reduced margin requirements help Clearing Members manage their cash flow by increasing available cash to be used for other purposes. In times of market stress and high volatility, lower initial margin requirements could prove crucial in maintaining the liquidity of Clearing Members and thus would enhance liquidity in the market as a whole.[35] By enhancing market liquidity, X–M arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[36]

In addition, the Commission consistently has indicated that by reducing the levels of initial margin to reflect more accurately a Clearing Member's portfolio risk, X–M arrangements enhance Clearing Member liquidity and thereby reduce the risk that Clearing Members will become insolvent in times of extreme market stress. Enhancing Clearing Member liquidity thus promotes the safety of the entire clearance and settlement system by increasing the liquidity of individual participants and thereby decreasing the threat of a ripple effect of insolvencies caused by the demise of a major market participant.

The bilateral programs and the trilateral program of this filing are based on the OCC/CME model, which embodies the concept of equal control and interest in assets held in X–M accounts, and the programs retain virtually all of the important safety provisions of the OCC/CME program. As with the OCC/CME X–M program, the Commission believes that the X–M programs proposed here are consistent with clearing agencies' statutory requirements to assure the safeguarding of funds and securities which are in their custody or control or for which they are responsible.

As participation in the X–M programs grows, so will the benefits enjoyed by participating organizations and Clearing Members. Participation in X–M arrangements has expanded considerably since the first facility was activated in 1988. In addition to the OCC/ICC and OCC/CME programs, three other X–M arrangements have been approved, and fifteen Clearing Members currently are participating in one or more of these programs.[37] As with the current proposal, these three X–M programs are modeled after the OCC/CME X–M arrangement. Those arrangements that are actively operating[38] have been very successful in reducing liquidity demands on Clearing Members. For instance, in 1992 firms participating in the OCC/CME and OCC/ICC programs were required to deposit 50% less margin than they would have been required to deposit without cross-margining for their eligible positions.[39] Implementation of the ICC/CME bilateral and OCC/ICC/CME trilateral programs will make more contracts eligible for cross-margining and will expand the field of available hedge positions, which should encourage wider participation in cross-margining.

Moreover, because the establishment of the ICC/CME and OCC/ICC/CME X–M programs will allow Clearing Members to cross-margin ICC-cleared contracts with CME-cleared contracts, the amount of margin deposited with clearing organizations on the futures side should decrease appreciably. In addition, participating Clearing Members generally will benefit through lower administrative costs.[40] Currently, the clearing organizations must maintain X–M accounts with multiple clearing banks. By extending cross-margining on both a bilateral basis and

settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options." For a detailed discussion of the progress toward coordination or linkage in the national clearance and settlement system, refer to Commission, Report on Progress Toward Establishing Linked or Coordinated Facilities for Clearance and Settlement of Transactions in Securities, Options, and Futures (March 5, 1993).

[31] Approximately 39 of OCC's 142 clearing members are registered both as broker-dealers and as futures commission merchants. Telephone conversations between Jean M. Cawley, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (June 18, 1993).

[32] 15 U.S.C. 78q–1(a)(2)(A)(ii) (1990).

[33] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 (approving non-proprietary X–M program between OCC and ICC).

[34] See *e.g.*, Securities Exchange Act Release Nos. 30413 (February 26, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation X–M program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME X–M program to include positions held for market professionals); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation X–M program for propriatary positions); 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME X–M program for proprietary positions).

[35] Securities Exchange Act Release No. 29991 (November 26, 1991), 56 FR 61458.

[36] *Id.* Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by X–M arrangements, would "help ensure that a securities market failure does not become a credit market failure." The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[37] The Commission and the CFTC have approved X–M arrangements between OCC and the Board of Trade Clearing Corporation ("BOTCC"), the clearing facility for the Chicago Board of Trade (Securities and Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680; by letter dated October 31, 1991, CFTC staff advised BOTCC that is proposal could be made effective immediately without prior CFTC approval); between OCC and the Kansas City Board of Trade Clearing Corporation ("KCBOTCC"), the clearing facility for the Kansas City Board of Trade ("KCBT") (Securities Exchange Act Release No. 30413 (February 26, 1992), 57 FR 7830; by letter dated February 25, 1992, CFTC staff advised KCBOTCC that its proposal could be made effective immediately without prior CFTC approval); and between OCC and the Comex Clearing Association ("CCA") (Securities Exchange Act Release No. 31414) (November 6, 1992), 57 FR 53943; by letter dated September 9, 1992, CFTC staff advised CCA that its proposal could be made effective immediately without prior CFTC approval).

[38] No clearing members currently participate in the OCC/CAA X–M program. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, and Richard C. Strasser, Attorney, Division, Commission (March 2, 1993).

[39] Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (March 5, 1993).

[40] Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, and Richard C. Strasser, Attorney, Division, Commission (March 2, 1993).

a trilateral basis, the proposal will allow participating clearing organizations to maintain accounts at fewer clearing banks and thereby will reduce costs associated with such accounts. These cost savings, in turn, may be passed on to Clearing Members.

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the Act and in particular with section 17A thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–OCC–92–28 and SR–ICC–92–5) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[41]

**Margaret H. McFarland,**

*Deputy Secretary.*

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**[Release No. 34–32533; File No. SR–OCC–93–13]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Filing of a Proposed Rule Change Relating to Establish a Non-Proprietary Cross-Margining Program with the Kansas City Board of Trade Clearing Corporation

June 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 20, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 proposed rule change will expand the cross-margining program between OCC and the Kansas City Board of Trade Clearing Corporation ("KCC") to include non-proprietary, market professional positions.

[41] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s (1988).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC 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*

The purpose of this rule change is to expand the current proprietary cross-margining program between OCC and KCC to include non-proprietary positions carried for market professionals.[2] OCC originally filed for both a proprietary and non-proprietary program with KCC; however, OCC later asked the Commission to defer action on the OCC/KCC non-proprietary program due to a request by KCC.[3] OCC now has been advised by KCC that it desires to proceed with non-proprietary cross-margining and, accordingly, OCC is renewing its request for such approval.

Except for the minor differences noted herein, the proposed program is similar in all respects to the existing non-proprietary cross-margining program between OCC and the Chicago Mercantile Exchange ("CME").[4] Although the existing Cross-Margining Agreement between OCC and KCC contains provisions for non-proprietary accounts, those provisions do not reflect the final form of the provisions in the OCC/CME Amended and Restated Cross-Margining Agreement that relate to non-proprietary cross-margining. Therefore, OCC and KCC have executed the Amended Cross-Margining Agreement ("OCC/KCC Amended X–M Agreement"), which is substantially similar to the OCC/CME Amended and Restated Cross-Margining Agreement. The proposed OCC/KCC program also is similar to the proposed non-proprietary cross-margining program between OCC and the Chicago Board of Trade Clearing Corporation ("BOTCC").[5]

Except for minor differences in language and certain terms that are particular to KCC (most notably the settlement times set forth in section 7), there are two noteworthy differences between the OCC/KCC Amended X–M Agreement and the Amended and Restated Cross-Margining Agreement between OCC and BOTCC ("OCC/BOTCC X–M Agreement").

First, the OCC–KCC Amended X–M Agreement does not contain provisions for "super margins" because KCC does not impose such margin requirements of its Clearing Members. OCC has always maintained that super margins are not essential to cross-margining, program between OCC and another commodity clearing organization that does not impose such requirements.[6]

Second, Exhibit A to the OCC/KCC Amended X–M Agreement lists the contracts eligible for cross-margining. Exhibit A is tailored for OCC/KCC cross-margining and reflects that in addition to put and call options on the Value Line Index, which were the original OCC cleared Eligible Contracts under the OCC/KCC proprietary cross-margining program, put and call options on the S&P MidCap 400 Index, Russell 2000 Index, and the Wilshire Small Cap Index have been added as Eligible Contracts for OCC.[7]

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act

[2] Securities Exchange Act Release No. 30413 (February 26, 1992), 57 FR 7830 (File No. SR–OCC–91–09) (order approving the OCC/KCC proprietary cross-margining program).

[3] Amendment Nos. 1 and 3 to File No. SR–OCC–91–09.

[4] For a description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 27296 (September 26, 1989), 54 FR 41195 [File No. SR–OCC–89–01] (order approving OCC/CME proprietary cross-margining) and 29991 (November 26, 1991), 56 FR 61458 (File No. SR–OCC–90–01) (order approving OCC/CME non-proprietary, market professional cross-margining).

[5] Securities Exchange Act Release No. 31537 (November 30, 1992), 57 FR 57854 (File No. SR–OCC–92–24) (notice of filing of the proposed rule change establishing the OCC/BOTCC non-proprietary cross-margining program). For a description of the OCC/BOTCC proprietary cross-margining program refer to Securities Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680 (File No. SR–OCC–91–07) (order approving the OCC/BOTCC proprietary cross-margining program). The OCC/BOTCC X–M Agreement also is based upon the current Amended and Restated Cross-Margining Agreement between OCC and the CME.

[6] Securities Exchange Release Act No. 31414 (November 6, 1992), 57 FR 53943 (File No. SR–OCC–92–22) (order approving OCC/Comex non-proprietary cross-margining program).

[7] In Securities Exchange Act Release No. 32020 (March 19, 1993), 58 FR 16438 (File No. SR–OCC–93–05) (notice and order granting accelerated approval) the Commission approved for cross-margining under the OCC/KCC proprietary cross-margining program the creation of a small capitalization index product group which includes the S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, MiniValue Line Index, and the Wilshire Small Cap Index. Accordingly, the list of Eligible Contracts in the OCC/KCC Amended X–M Agreement includes the KCC cleared futures and options of futures on the Value Line Index and on the MiniValue Line Index and put and call options on the OCC cleared small capitalization index product group excluding the MiniVAlue Line Index. The amendment to Exhibit A, therefore, is merely conforming in nature.

because it expands cross-margining to another significant group of market participants, further enhancing the safety of the clearing system while providing lower margin costs to participants.

**B. Self-Regulatory Organization's Statement on the Burden on competition**

OCC does not believe that the proposed rule change will impose any burden on competition.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–93–13 and should be submitted by July 27, 1993.

For the Commission by the Division of Marketing Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15801 Filed 7–2–93; 8:45 am]

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**[Release No. 34–32545; International Series Release No. 557; File No. SR–PHLX–93–25]**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Change in the Foreign Currency Trading Hours for the British Pound and British Pound/German Mark Cross-Rate Contracts.

June 29, 1993.

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 18, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend its foreign currency options ("FCOs") trading hours respecting the British pound and British pound/German mark cross-rate FCO contracts. Specifically, the Exchange intends to adjust its FCO trading hours schedule by suspending the 6 p.m. through 3:30 a.m. Eastern Standard Time ("E.S.T.") trading session ("Evening Session") for these FCO option contracts.

The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange 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 PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The PHLX's FCO trading hours generally commence at 6 p.m. E.S.T. each Sunday through Thursday and terminate at 2:30 p.m. E.S.T. each Monday through Friday. Historically, according to the Exchange, the trading in the British pound and British pound/German mark cross-rate FCO contracts are marked by little trading interest and corresponding liquidity during the Evening Session. The Evening Session generally corresponds to the primary business hours in the Far East and, according to the Exchange, has received limited trading volume in these European time zone oriented FCO contracts over the past year. In this regard, the PHLX believes that the anticipated limited trading interest in the British pound and British pound/German mark cross-rate FCO contracts can be adequately handled and executed during the 3:30 a.m. to 2:30 p.m. E.S.T. trading session. The Exchange further believes that the proposed adjustments to FCO trading hours in these particular contracts will ease the staffing burden on the current registered FCO specialist units. If the proposed rule change is approved, the British pound and British pound/German mark cross-rate FCO contracts will join the French franc, European Currency Unit, and Canadian dollar contracts which trade exclusively from 3:30 a.m. to 2:30 p.m. E.S.T.

The PHLX will be responsive to any change in marketplace demand for reinstating evening trading hours for these and other FCO contracts should the need so arise.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any 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**

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

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(b)(5).[1] Specifically, given the realities of the global foreign currency market, which, according to the Exchange, historically is marked by reduced or declining liquidity in the market for British pound and British pound/German mark cross-rate FCO contracts during the Evening Session, the Commission believes that the Exchange's proposal to amend the trading hours for the British pound and British pound/German mark cross-rate FCO contracts, likely will not have a material impact on market participants while, at the same time, will help to reduce operational burdens during the Evening Session. In addition, the PHLX FCO market will be open for trading the British pound and British pound/German mark cross-rate FCO contracts during the 3:30 a.m. to 2:30 p.m. E.S.T. trading session, so that investors will have the ability to access the Exchange's FCO market to trade these contracts.[2] Moreover, the Commission notes that the Exchange has issued notices to its membership advising them of the proposed changes, and will issue another notice to its membership upon approval of the proposed rule change,[3] thereby avoiding any possible investor confusion. Finally, the Commission notes that the French franc, European Currency Unit, and Canadian dollar FCO contracts already trade on the schedule proposed for the British pound and British pound/German mark cross-rate FCO contracts and thus this rule change should not create any undue customer confusion. Based on the above, the Commission finds that the Exchange's proposal to change the FCO trading hours for British pound and British pound/German mark cross-rate FCO contracts as described herein is consistent with just and equitable principles of trade and the protection of investors.[4]

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 in the Federal Register. Accelerating approval of this proposal will allow the Exchange to notify FCO specialist units, member firms, and customers of the schedule changes, thus permitting the Exchange to ease the operational burdens resulting from the low trading activity of the British pound and British pound/German mark cross-rate FCO contracts during the Evening Session, in a timely fashion. Accordingly, the Commission believes it is consistent with sections 6 and 19 of the Act to approve the proposed rule change on an accelerated basis.

**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 in 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 PHLX. All submissions should refer to File No. SR–PHLX–93–25 and should be submitted August 2, 1993.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–PHLX–93–25), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–15832 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32546; International Series Release No. 558; File No. SR–PHLX–93–22]**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to a Change in the Holiday Trading Schedule for Foreign Currency Options for Independence Day, Labor Day, and Boxing Day, 1993

June 29, 1993.

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 May 25, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX. The PHLX submitted one amendment to its proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend its

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[1] 15 U.S.C. 78f(b)(5) (1988).

[2] Indeed, the PHLX has represented to the Commission that should investor and market needs warrant, it will consider reinstating the Evening Session for these and other FCO contracts.

[3] See Circular No. 93–93, from Murray L. Ross, Secretary, PHLX, to Members, dated June 8, 1993. The PHLX has represented that upon approval of this proposal, it will provide at least two weeks advance notice prior to adjustment of the trading hours for the British pound and British pound/German mark cross-rate FCO option contracts. See Letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Bradley S. Ritter, Attorney, Division of Market Regulation, Commission, dated June 29, 1993.

[4] The Commission recognizes that the regular business hours for the Far East market occur during the Evening Session. Nevertheless, because the PHLX has represented that the trading volume in the British pound and British pound/German mark cross-rate FCO option contracts is extremely limited during the Evening Session, we believe, given the staffing burden on registered FCO specialist units, it is permissible and within the PHLX's business judgment to alter its trading hours as proposed.

[5] 15 U.S.C. 78s(b)(92) (1988).

[6] 17 CFR 200.30–3 (a)(12) (1993).

[1] In Amendment No. 1, the PHLX proposes to change its foreign currency options trading hours on Boxing Day, 1993, by opening for trading at 8 a.m. rather than 3:30 a.m. E.S.T. on December 27, 1993. In its original filing, the Exchange had proposed to close during the evening session beginning at 6 p.m. E.S.T. on Boxing Day until 3 a.m. E.S.T. on Tuesday, December 28, 1993. See Letter from Murray L. Ross, Secretary, PHLX, to Richard Zack, Branch Chief, Division of Market Regulation, Commission, dated May 27, 1993. In a subsequent clarification of the proposal, the Exchange represented that the evening trading hours for FCOs are from 6 p.m. E.S.T. until 3:30 a.m. E.S.T., not 3 a.m. E.S.T. See Letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Richard L. Zack, Branch Chief, Division or Market Regulation, Commission, dated June 29, 1993.

holiday schedule with respect to the trading of foreign currency options ("FCCs") on the Independence Day, Labor Day, and Boxing Day holidays in 1993. Specifically, the Exchange intends to close during (i) the trading session from 6 p.m. through 3:30 a.m. Eastern Standard Time ("E.S.T.") ("Evening Session") beginning on Monday, July 5, 1993 (in observance of Independence Day); (ii) the Evening Session beginning on September 6, 1993 (in observance of Labor Day); and (iii) the trading session from 3:30 a.m. through 8 a.m. E.S.T. on Boxing Day, Monday, December 27, 1993.

The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange 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 PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The PHLX's FCO trading hours generally commence at 6 p.m. E.S.T. each Sunday through Thursday and terminate at 2:30 p.m. E.S.T. each Monday through Friday. Historically, according to the Exchange, the resumption of foreign currency option trading on certain holidays is marked by reduced trading interest and liquidity, particularly during the Evening Session. While the Evening Session generally corresponds to the primary business hours in the Far East, the Exchange has stated that over the past year, this session has generally received limited trading volume, and on certain holidays, that situation is exacerbated. In this regard, the PHLX believes that the anticipated limited trading interest that would be reflected in the Evening Session on the observed Independence Day and Labor Day holidays in 1993, can be adequately handled and executed during the 3:30 a.m. to 2:30 p.m. E.S.T. trading session immediately following those days.[2] Additionally, the Exchange anticipates that as a result of the observance in foreign market centers of Boxing Day on Monday, December 27, 1993, the trading session from 3:30 a.m. through 8 a.m. E.S.T. on Boxing Day will also receive limited trading volume.[3] Therefore, the Exchange believes that the limited trading interest during this session can be adequately handled and executed during the 8 a.m. to 2:30 p.m. E.S.T. session on Boxing Day. The Exchange further believes that the modified trading hours during these holiday periods also will ease the staffing burden on current FCO specialist units at a time when key employees traditionally take holiday vacations. Accordingly, the PHLX proposes to institute the revised trading hours for Independence Day, Labor Day, and Boxing Day, 1993, as proposed herein.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any 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**

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

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(b)(5).[4] Specifically, given the realities of the global foreign currency market, which, according to the Exchange, historically is marked by reduced or declining liquidity during these holiday periods, the Commission believes that the Exchange's proposal to amend the trading hours for FCOs during the Independence Day, Labor Day, and Boxing Day holidays in 1993, will help to reduce operational burdens during the periods. In addition, the PHLX FCO market will remain open during the 3:30 a.m. to 2:30 p.m. E.S.T. trading sessions following Independence Day and Labor Day, and from 8 a.m. to 2:30 p.m. E.S.T. on Boxing Day, so that investors will have the ability to access the Exchange's FCO market. Moreover, the Commission notes that the Exchange will issue notices to its membership advising them of these changes, thereby avoiding any possible investor confusion.[5] Based on the above, the Commission finds that the Exchange's proposal to change the FCO trading hours as described herein is consistent with the just and equitable principles of trading and the protection of investors.[6]

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 in the **Federal Register**. Accelerating approval of this proposal will provide the Exchange with sufficient time to notify FCO specialist units, member firms, and customers of the schedule changes and allow such persons and entities to revise plans based on the

[2] Under the present FCO trading schedule, the Exchange will be closed from 1 p.m. E.S.T. on Friday, July 2, 1993, until 6 p.m. E.S.T. on Monday, July 5, 1993, in observance of Independence Day, and from 1 p.m. E.S.T. on Friday September 3, 1993, until 6 p.m. E.S.T. on Monday, September 6, 1993, in observance of Labor day. Accordingly, upon approval of the proposal herein, FCOs will not be open for trading on the PHLX from 1 p.m. E.S.T. on July 2, 1993, through 3:30 a.m. E.S.T. on July 6, 1993, and from 1 p.m. E.S.T. on September 3, 1993, through 3:30 a.m. E.S.T. on September 7, 1993.

[3] Under the present FCO trading schedule, the Exchange will be closed from 1 p.m. E.S.T. on Thursday, December 23, 1993, until 3:30 a.m. E.S.T. on December 27, 1993, in observance of Christmas. Accordingly, upon approval of the proposal herein, FCOs will not be open for trading on the PHLX from 1 p.m. E.S.T. on December 23, 1993, through 8 a.m. E.S.T. on December 27, 1993.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] The Exchange shall notify its membership of the rule change upon approval of the proposal by the Commission, and again prior to each holiday. See Letter from Murray L. Ross, Secretary, PHLX, to Bradley S. Ritter, Attorney, Division of Market Regulation, Commission, dated June 23, 1993.

[6] The Commission recognizes that the regular business hours for the Far East market occur during the Evening Session. Nevertheless, because the PHLX has represented that the trading volume is extremely limited, we believe, given the staff limitations at the Exchange due to the Independence Day and Labor Day holidays, it is permissible and within the PHLX's business judgment to alter its trading hours as proposed. Similarly, because the PHLX has represented that the trading volume during the 3:30 a.m. to 8 a.m. E.S.T. session on Boxing Day will receive extremely limited trading volume, we believe, again given the staff limitations of the Exchange, it is permissible and within the PHLS's business judgment to alter its trading hours on Boxing Day as proposed.

amendment holiday schedule. Accordingly, the Commission believes it is consistent with sections 6 and 19 of the Act to approve the proposed rule change on an accelerated basis.

**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 in 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 PHLX. All submissions should refer to File No. SR–PHLX–93–22 and should be submitted July 27, 1993.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PHLX–93–22), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 93–15833 Filed 7–2–93; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ended June 25, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 48882.
*Date filed:* June 21, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC31 Reso/P 0998 dated June 18, 1993 Japan—TC1 Resolution r–1 to 14.
*Proposed Effective Date:* October 1/ November 1, 1993.

*Docket Number:* 48890.
*Date filed:* June 23, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC12 Telex—Mail Vote 636, USA to Israel—Seasonal Periods for Fares, Telex—Amendment to Mail Vote.
*Proposed Effective Date:* September 1, 1993.
*Docket Number:* 48891.
*Date filed:* June 23, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* COMP Telex—Reso 033f—Portugal rates.
*Proposed Effective Date:* July 1, 1993.
*Docket Number:* 48892.
*Date filed:* June 23, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* PAC/Reso/379 dated June 16, 1993, Finally Adopted Resos r–1 to r–31.
*Proposed Effective Date:* October 1, 1993.
*Docket Number:* 48893.
*Date filed:* June 23, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* Meeting site/date, if applicable: Geneva, June 3–11, 1993 IATA Agreement:
TC2 Reso/P 1427 dated June 18, 1993 r1–8
TC2 Reso/P 1428 dated June 18, 1993 r9–14
TC2 Reso/P 1429 dated June 18, 1993 r15–20
TC2 Reso/P 1430 dated June 18, 1993 r21
TC2 Reso/P 1433 dated June 18, 1993 r22–24
TC2 Reso/P 1434 dated June 18, 1993 r25–28
TC2 Reso/P 1435 dated June 18, 1993 r29–33
TC2 Reso/P 1438 dated June 18, 1993 r34–35
TC2 Reso/P 1439 dated June 18, 1993 r36–38
*Proposed Effective Date:* Expedited Sept. 1/Oct. 1/Nov, 1993 Expedited Jan. 1, 1994.
*Docket Number:* 48894.
*Date filed:* June 23, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* Meeting site/date, if applicable: Geneva, June 3–11, 1993
TC2 Reso/P 1426 dated June 18, 1993 r1–6
TC2 Reso/P 1431 dated June 18, 1993 r–7
TC2 Reso/P 1432 dated June 18, 1993 r8–12
TC2 Reso/P 1436 dated June 18, 1993 r–13
TC2 Reso/P 1437 dated June 18, 1993 r14–16
*Proposed Effective Date:* Expedited August 15, 1993.
*Docket Number:* 48895.
*Date filed:* June 23, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC3 Reso/C 0083 dated May 18, 1993
TC3 (except to/from UST) R1–6
Minutes—TC3 Meet/C 0022 dated June 4, 1993
Rates Tables—Rates 0083 dated June 15, 1993
*Proposed Effective Date:* October 1, 1993.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*

[FR Doc. 93–15843 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 25, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 48885.
*Date filed:* June 22, 1993.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 20, 1993.
*Description:* Application of Tower Air, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for issuance of a Certificate of Public Convenience and Necessity, or amendment of its current Certificate for authority to operate scheduled passenger, property and mail air service between New York, N.Y. and The Netherlands and India.

*Docket Number:* 48887.
*Date filed:* June 22, 1993.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 20, 1993.
*Description:* Application of Delta Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the

[7] 15 U.S.C. 78s(b)(2) (1988).
[8] 17 CFR 200.30–3(a)(12) (1988).

Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide scheduled foreign air transportation between London, United Kingdom and Frankfurt, Federal Republic of Germany with local traffic rights.

*Docket Number:* 48897.

*Date filed:* June 25, 1993.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 23, 1993.

*Description:* Application of Oasis International Airlines, S.A., pursuant to Section 412 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between points in Spain and points in the United States.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 93–15844 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

## Office of the Secretary

**[Order 93–6–39 and Docket 48794]**

### Application of UFS, Inc. For Certificate Authority Under Subpart Q

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding UFS, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than July 14, 1993.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 48794 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Szekely, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–9721.

Dated: June 29, 1993.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Policy and International Affairs.*

[FR Doc. 93–15874 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

### Fitness Determination of Chicago Express Airlines, Inc.

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Commuter Air Carrier Fitness Determination—Order 93–6–40 Order to Show Cause.

**SUMMARY:** The Department of Transportation is proposing to find that Chicago Express Airlines, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 14, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2342.

Dated: June 29, 1993.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Policy and International Affairs.*

[FR Doc. 93–15873 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–62–P

## Federal Aviation Administration

### Grants and Cooperative Agreements; Airway Science Program

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

**ACTION:** Exrtension of closing date and clarification of application directions for notice of solicitation for airway science grant proposals.

**SUMMARY:** The solicitation published in the **Federal Register** (58 FR 21763, April 23, 1993) represents a continuation of the Federal Aviation Administration's Airway Science (AWS) Grant Program. The Federal Aviation Administration (FAA) is authorized by Public Laws 101–516 and 102–143 to solicit competitive proposals for AWS grants from accredited public or nonprofit private colleges and universities with recognized FAA AWS Curriculum programs. FAA previously announced in the **Federal Register** the availability of $5,036,834 in AWS grant funding with the Federal share of any grant project not to exceed 50 percent of the cost of the project.

Public Law 101–516 provided $1,275,834 of the total available funds and established the maximum Federal share at 50 percent. Public Law 102–143 provided the remaining $3,761,000 in grant funding also with a maximum Federal share of 50 percent. However, Public Law 102–388 revised the Federal share of projects funded under the AWS Grant Program to a maximum of 65 percent. The law further stated that such Federal share shall be considered as having taken effect on October 1, 1991. As a result, this Notice states (1) the maximum Federal share of projects totalling $1,275,834 funded under Public Law 101–516 shall not exceed 50 percent and, (2) the maximum Federal share of projects funded with the remaining available $3,761,000 provided under Public Law 102–143 shall not exceed 65 percent.

The FAA expects to award most, if not all, of an available $5,036,834 in the form of grants, to a select number of recognized AWS institutions. A portion of the available funds will be awarded to eligible minority institutions with recognized AWS curricula. Awards will range up to a maximum of $300,000.

The grant funds may be used for the purchase, lease with intent to purchase, or construction of academic buildings and associated facilities to be used in direct support of an FAA recognized AWS curriculum. In addition, grant funds may be used for nonexpendable instructional materials or instructional equipment to be used in the actual teaching of the AWS curriculum. No federal grant funds shall be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies or other expendable items, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, general purpose parking lots, land, commercial airport facilities, taxiways, runways, or any project in support of a commercial activity.

Priority consideration will be give to grant applications submitted by institutions which have not received noncompetitive grant awards under the AWS Grant Program since Fiscal Year 1991 and to applications requesting funds in support of receive sites under the AWS Network.

**FOR FURTHER INFORMATION CONTACT:**

Virginia Hancock Krohn, Manager, Airway Science Grant Program, Federal Aviation Administration, Office of Training and Higher Education, AHT–30, room PL–100, 400 7th St., SW, Washington, DC 20590, Telephone: (202) 366–7003.

**Closing Date**

The closing date is extended to July 23, 1993.

**Clarification of Application Directions**

Institutions may submit only one grant application (six copies) in response to this Notice of Solicitation For Airway Science Grant Proposals.

Issued in Washington, DC, on June 22, 1993.

**R.M. Rice,**

*Director, Office of Training and Higher Education.*

[FR Doc. 93–15847 Filed 7–2–93; 8:45 am]

BILLING CODE 4810–13–M

## Federal Highway Administration

### Environmental Impact Statement: Shelby and Fayette Counties, TN

**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 will be prepared for a proposed project in Shelby and Fayette Counties, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wright B. Aldridge, Jr., Research and Technical Systems Engineer, Federal Highway Administration, 249 Cumberland Bend Drive, Nashville, TN 37228; Telephone (615) 736–7106.

**SUPPLEMENTAL INFORMATION:** The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct an access-controlled four-lane facility from Mt. Pleasant Road near Collierville to just south of Interstate 40, Shelby and Fayette Counties, Tennessee. The proposed State Route 385 would be on new location and will be approximately 16–17 miles in length, depending upon the choice of proposed alternatives. Improvements to the corridor are considered necessary to provide for both present and projected traffic needs.

Options under consideration include (1) taking no action and (2) constructing an access-controlled four-lane facility on new location. There are two major build alternatives being proposed.

Letters describing the proposed action and soliciting comments were sent to appropriate federal, state, and local agencies on June 21, 1993. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The Draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Issued On: June 25, 1993.

**Wright B. Aldridge, Jr.,**

*Research & Technical Systems, Tennessee Division, Nashville, Tennessee.*

[FR Doc. 93–15767 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–22–M

## Federal Transit Administration

### Transit Technology Program: Advisory Committee Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the fourth Federal Transit Administration (FTA) Transit Industry Technology Development Advisory Committee meeting to be held on August 18, 1993. The discussions will focus on the general condition of the transit equipment market, legislative and institutional barriers to transit industry growth, methods of stimulating technological innovation, defense conversion opportunities, and how the Department can facilitate increased U.S. production of rail and transit equipment for both domestic consumption and export.

**MEETING DATES:** The meeting will take place August 18, 1993, 9 a.m. to 4.30 p.m.

**ADDRESSES:** The Advisory Committee meeting will be held in room 2230 at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jeffery G. Mora, Federal Transit Administration, Office of Technical Assistance and Safety, (202) 366–0215.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Transit Administration (FTA) has held three previous meetings of the Transit Industry Technology Development Federal Advisory Committee. The first meeting provided guidance to the Committee membership about their responsibilities, and what the FTA expects of the Committee. This meeting also established the objectives of the Committee, as well as key technology areas that the transit industry would be addressing. The second meeting included a lengthy discussion of FTA procurement practices and a review of the FTA Fiscal Year 1992 Technology Program Plan. The third meeting, a follow-up to the previous meeting, served as a forum to seek the views of the Committee members about the FTA Office of Technical Assistance and Safety's proposed six-year Technology Program Plan.

The fourth meeting will focus on issues related to how the Department can facilitate increased U.S. manufacturing of transit equipment for both domestic consumption and export.

**Procedures**

The FTA will provide interpreters for persons with hearing disabilities, if requested by August 13, 1993. All meetings of the Transit Industry Technology Development Advisory Committee will be open to the public.

Issued on: June 30, 1993.

**Robert H. McManus,**

*Acting Administrator.*

[FR Doc. 93–15866 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–57–M

## National Highway Traffic Safety Administration

**[Docket No. 92–71; Notice 2]**

### Hackney and Sons, Inc.; Disposition of Petition for Determination of Inconsequential Noncompliance

Hackney and Sons, Inc. (Hackney) of Washington, North Carolina, determined that some of its trailers fail to comply with 49 CFR 571.121, Federal Motor Vehicle Safety Standard No. 121, "Air Brake Systems," and filed an appropriate report pursuant to 49 CFR part 573. Hackney also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15

U.S.C. 1381 et seq.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 31, 1992, and an opportunity afforded for comment (57 FR 62602).

Between June 1987 and May 1991, Hackney manufactured 130 trailers which it determined did not comply with the brake release time requirements of Standard No. 121 for trailers designed to tow another vehicle with air brakes. Between May 1991 and October 1992 Hackney produced 131 of the same type of trailer which it also determined did not comply with both the brake actuation and release time requirements of the standard.

**I. Brake Release Times**

*A. Release Time Requirements of Standard No. 121*

In Standard No. 121, vehicles manufactured before May 3, 1991 have the option to comply with the release time requirements of either paragraph S5.3.4.3 (hereinafter "old brake release test requirement") or paragraph S5.3.4.1 (hereinafter "new brake release test requirement"). Vehicles manufactured on or after May 3, 1991 must comply with the new brake release test requirement.

The old brake release test requirement is that

> [w]ith an initial service brake chamber air pressure of 95 pounds per square inch (psi), the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than * * * 0.65 second [this time interval is referred to as the release time] in the case of trailers. * * * A trailer * * * shall meet the above release time requirement with * * * the test rig shown in Figure 1(a) of the standard.

The new brake release test requirement is that these trailers have a release time that does not exceed 1.00 second when using the test rig depicted in Figure 1 of the standard, which is a different test rig from that in Figure 1(a). From this point on, the test rigs in Figures 1 and 1(a) will be referred to as "new test rig" and "old test rig," respectively.

*B. Hackney Brake Release Time Tests*

Hackney tested two samples of model year 1993 trailers using both the old brake release test requirement and the new brake release test requirement. In a phone conversation, Curtis B. Brookshire, Director of Research and Development for Hackney, indicated that there have been no air brake design changes from model years 1987 to 1993. Therefore, Mr. Brookshire expected that the pre-model year 1993 trailers would perform at the same level of noncompliance as the 1993 trailers in the air brake timing tests.

In the release time tests using the old brake release test requirements, the times ranged from 0.684 to 0.690 second, exceeding the maximum of 0.65 second allowed by the standard. These results placed the trailers manufactured before May 3, 1991 out of compliance with the release time portion of the standard.

In the release time tests using the new brake release test requirement, the times ranged from 1.344 to 1.428 seconds, exceeding the maximum of 1.00 second allowed in the standard. These results placed the trailers manufactured on or after May 3, 1991 out of compliance with the release time requirements of the standard.

**II. Brake Actuation Times**

*A. Actuation Time Requirements of Standard No. 121*

Vehicles manufactured before May 3, 1991 have two actuation time options. Vehicles can either comply with the actuation time requirements of paragraph S5.3.3.3 (hereinafter "old brake actuation test requirement") or of paragraph S5.3.3.1 (hereinafter "new brake actuation test requirement"). Vehicles manufactured on or after May 3, 1991 must comply with the new brake actuation test requirement.

The old brake actuation test requirement is that:

> [w]ith an initial service brake chamber air pressure of 100 pounds per square inch (psi), the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 psi in not more than * * * 0.30 second [this time interval is referred to as the actuation time] in the case of trailer. * * * A trailer * * * shall meet the above test rig shown in Figure 1(a) [old test rig].

The new brake actuation test requirement is that these trailers have an actuation time that does not exceed 0.50 second when using the test rig in Figure 1 (new test rig).

*B. Hackney Brake Actuation Time Tests*

Hackney tested the same model year 1993 trailers in the actuation time tests as it used for the release time tests.

When using the old brake actuation test requirement, the actuation times ranged from 0.204 to 0.216 second. These times comply with the requirement of not more than 0.30 second required in the old brake actuation test requirement. However, this requirement is not applicable to post May 3, 1991 vehicles.

In the test using the new brake actuation test requirement, the actuation times ranged from 0.582 to 0.636 second. These test results did not comply with the maximum 0.50 second actuation time required in the new brake actuation test requirement. These results place the trailers manufactured on or after May 3, 1991 out of compliance with the actuation time requirements of the standard.

**III. Hackney Rationale**

Hackney believes that the noncompliances are inconsequential as they relate to motor vehicle safety for the following two reasons:

1. The actuation times on the post-May 3, 1991 units comply with the pre-May 3, 1991 requirements of the standard.

2. The release times on both the pre- and post-May 3, 1991 units are only slightly out of compliance with the pre-May 3, 1991 portion of the standard.

In addition, Hackney cited comments on a final rule, which NHTSA issued on May 1, 1989, amending the timing requirements of Standard No. 121 (54 FR 18890). Hackney stated that the materials supported its petition, without offering elaboration. The materials Hackney cited are as follows:

> MVMA also asserted that *NHTSA's own test results do not support the significance of combination timing on trailer push, jackknifing, or accident avoidance.* (54 FR 18893)
>
> Bendix stated that it believes that, for combination vehicles, faster application times coupled with improved timing balance will result in shorter stopping distances and better driving control. That commenter stated that it believes also the proposed changes are in the proper direction and are technically feasible, although *it is unaware of data to substantiate performance improvements."* (54 FR 18894)
>
> GM argued further that while NHTSA has implied that the kingpin forces measured are largely the result of the brake timing existent on the tested vehicle combinations, those forces are actually a function of brake system pneumatic balance, torque balance, brake application technique and timing. *The commenter asserted that NHTSA has demonstrated neither that there is a need to lower such forces nor that the revisions proposed would serve to achieve that end."* (54 FR 19894)
>
> One commenter, Volvo White opposed the adoption of gladhand timing requirements. This company argued that manufacturer's compliance data would be invalidated, that many of the changes implemented over the last ten years to improve tractor trailer compatibility would no longer be available, and that *NHTSA's research does not justify the need for the proposed requirements."* (54 FR 18805) (emphasis original in all quotes).

Once Hackney discovered the noncompliance, it added a booster valve in the trailer brake system to correct both the actuation and release timing

problems. Hackney stated that trailers currently in production fully comply with the actuation and release time requirements of Standard No. 121.

No comments were received on the petition.

The agency has accorded little weight to Hackney's bare citation of comments without elaboration. NHTSA had already considered these comments in establishing the final rule published on May 1, 1989. NHTSA has decided to dispose of the petition by Hackney in the manner and for the reasons discussed below.

*A. Brake Release Time of the 130 Trailers Manufactured Before May 3, 1991*

The requirement in effect for trailers manufactured before May 3, 1991, established a brake release time of not more than 0.65 second. The range of brake release time experienced by petitioner's trailers was 0.684 to 0.690 second, resulting in a range of noncompliance of 0.034 to 0.040 second.

NHTSA has examined the rulemaking history of Standard No. 121 including the comments submitted to the various dockets to see if there were any characterizations of the effect on braking performance of an increase in brake release time measured in hundredths of a second. There were no such comments. Informed opinion at NHTSA headquarters and its Vehicle Research Test Center in Ohio is that the slight increase in release time reflected in this noncompliance will not adversely affect the braking performance of the noncompliant trailers, and will not have a measurable impact upon safety.

Accordingly, the petitioner has met its burden of persuasion that the noncompliance with S5.3.4.3 of Standard No. 121, by 130 trailers manufactured before May 3, 1991, is inconsequential as it relates to motor vehicle safety, and its petition is granted.

*B. Brake Release Time of the 131 Trailers Manufactured on and After May 3, 1991*

The requirement in effect for trailers manufactured on and after May 3, 1991, establishes a brake release time of not more than 1.00 second, when a vehicle is tested in accordance with a new procedure that the agency had determined better represented the actual braking performance experienced by a motor vehicle equipped with an air brake system. The range of brake release times experienced by the petitioner's trailers was 1.344 to 1.428 seconds, resulting in a range of noncompliance of 0.344 to 0.428 second. These values represent a 28 to 43% increase over the maximum permitted by the standard, and the agency does not believe that such a deviation can be considered inconsequential.

Inadequate release timing of trailer air brakes can adversely affect braking performance. For example, if the trailer's wheels do not unlock fast enough as the driver is attempting to stop, the trailer will skid. In order for the driver to regain control, immediate release of the brakes is necessary.

Accordingly, the petitioner has not met its burden of persuasion that the failure of the 131 trailers manufactured on and after May 3, 1991, to conform to S5.3.4.1 of Standard No. 121 is inconsequential as it relates to motor vehicle safety, and its petition is denied.

*C. Brake Actuation Time of Trailers Manufactured on and After May 3, 1991*

The requirement in effect for trailers manufactured on and after May 3, 1991, establishes a brake actuation time of not more than 0.50 second, when a trailer is tested in accordance with the new test procedure. The range of brake actuation times experienced by the petitioner's trailers was 0.582 to 0.636 second, resulting in a range of noncompliance of .082 to 0.136 second. These values represent an increase of 16 to 27 percent over the maximum permitted by the standard, and in this instance as well, the agency does not believe that such a deviation can be considered inconsequential.

Inadequate actuation time of trailer air brakes can adversely affect braking performance. For example, if a trailer's brakes are applied more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. In addition, if the brakes are applied during a turn on a wet road, this force on the kingpin may reduce the stability of a tractor-trailer combination and contribute to a jackknifing accident.

Accordingly, the petitioner has not met its burden of persuasion that the failure of the 131 trailers manufactured on and after May 3, 1991, to comply with S5.3.3.1 of Standard No. 121 is inconsequential as it relates to motor vehicle safety, and its petition is denied.

**Authority:** 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 30, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–15868 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–59–M

**[Docket No. 93–49; Notice 1]**

## Receipt of Petition for Determination That Nonconforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) Multi-Purpose Passenger Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Request for comments on petition for determination that nonconforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) multi-purpose passenger vehicles (MPVs) are eligible for importation.

**SUMMARY:** This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

**DATES:** The closing date for comments on the petition is August 2, 1993.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under section 108(c)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i)(I), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II),

permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R–91–002) has petitioned NHTSA to determine whether 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs are eligible for importation into the United States. Europa contends that this vehicle is eligible for importation under section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), because it has safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence* * * * (based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on inspection), 104 *Windshield Wiping and Washing Systems* (based on operation and certification of vehicle to European standard), 105 *Hydraulic Brake Systems* (based on documented testing and comparison of components to U.S.-model counterparts), 106 *Brake Hoses* (based on visual inspection of certification markings), 107 *Reflecting Surfaces* (based on visual inspection), 113 *Hood Latch Systems* (based on operation), 116 *Brake Fluids* (based on visual inspection of certification markings), 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on operation), 201 *Occupant Protection in Interior Impact* (based on test film and certification of vehicle to European standard), 202 *Head Restraints* (based on test film and certification of vehicle to European standard), 204 *Steering Control Rearward Displacement* (based on test film), 205 *Glazing Materials* (based on visual inspection of certification markings), 206 *Door Locks and Door Retention Components* (based on certification of vehicle to European standard), 207 *Seating Systems* (based on undocumented test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on certification markings and schematic diagram of seat belt warning system), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 291 *Windshield Zone Intrusion* (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 *Flammability of Interior Materials* (based on composition of upholstery).

The petitioner also contends that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV is capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors. The petitioner asserts that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors:* Replacement of the convex passenger side rearview mirror with a flat surfaced mirror, or inscription of the required warning statement on the mirror's convex surface.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard. The petitioner asserts that the tire rims are certified by their manufacturer as complying with the standard, even though they lack a DOT certification marking.

Standard No. 208 *Occupant Crash Protection:* Installation of a complying driver's side air bag and a seat belt warning buzzer. The petitioner asserts that the vehicle conforms to the standard's head injury criteria at the front passenger position based on a test report from the vehicle's manufacturer.

Standard No. 210 *Seat Belt Assembly Anchorages:* Insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner asserts that the vehicle is certified as complying with a European standard that contains more severe force application requirements than those of this standard.

Standard No. 212 *Windshield Retention:* Application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 *Fuel System Integrity.* The petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at the lower speed of 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle.

The petitioner additionally notes that Standard Nos. 214 *Side Impact Protection* and 216 *Roof Crush Resistance* will apply to MPVs built on or after September 1, 1993. Although it assumes that it will first modify vehicles built before September 1, 1993, the petitioner stated that it intends to conduct tests confirming the requirements of those standards so that vehicles built after that date can be certified. The petitioner also expressed the belief that the Gelaendewagon 300GE will meet Standard No. 216 without the need for modification.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 15 U.S.C. 1397(C)(3)(a)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 29, 1993.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 93–15869 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–59–M

## Research and Special Programs Administration

### Grants and Denials of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Notice of grants and denial of application for exemptions, correction.

**SUMMARY:** Notice of Application No. 10803–N Western Electric Corporation that appeared at page 33977 of the **Federal Register** for June 22, 1993, should have appeared 10803–N Westinghouse Electric Corporation.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Programs, Office of Hazardous Materials, Exemptions and Approvals.*

[FR Doc. 93–15842 Filed 7–2–93; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: June 28, 1993.

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:* 1545–0087

*Form Number:* IRS Forms 1040–ES, 1040–ES(NR), and 1040–ES (Espanol)

*Type of Review:* Revision

*Title:* Estimated Tax for Individuals (U.S.Citizens and Residents) (1040–ES), For Nonresident Aliens (1040–ES(NR)), For Use in Puerto Rico (In Spanish)

*Description:* Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.

*Respondents:* Individuals or households

*Estimated Number of Respondents/ Recordkeepers:* 14,563,250

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | 1040–ES | 1040–ES(NR) | 1040–ES espanol |
|---|---|---|---|
| Recordkeeping | 1 hr., 19 min | 40 min | 7 min. |
| Learning about the law | 19 min | 15 min | 7 min. |
| Preparing the worksheets and payment vouchers | 53 min | 1 hr., 3 min | 32 min. |
| Copying, assembling, and sending the payment voucher to the IRS | 10 min | 10 min | 10 min. |

*Frequency of Response:* Quarterly

*Estimated Total Reporting/ Recordkeeping Burden:* 1,117,862,200 hours

*OMB Number:* 1545–0188

*Form Number:* IRS Form 4868

*Type of Review:* Revision

*Title:* Application for Automatic Extension of Time to File U.S. Individual Income Tax Return

*Description:* Form 4868 is used by taxpayers to apply for an automatic four-month extension of time to file Form 1040, Form 1040A, or Form 1040EZ. This form contains data used by the Service to determine if a taxpayer qualifies for the extension.

*Respondents:* Individuals or households

*Estimated Number of Respondents/ Recordkeepers:* 5,572,999

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordingkeeping—26 minutes

Learning about the law or the form—12 minutes

Preparing the form—18 minutes

Copying, assembling, and sending the form to the IRS—20 minutes

*Frequency of Response:* Annually

*Estimated Total Reporting/ Recordkeeping Burden:* 7,021,978 hours

*Clearance Officer:* Garrick Shear (202) 622–3869, 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. 93–15797 Filed 7–2–93; 8:45 am]

BILLING CODE 4830–01–M

## Internal Revenue Service

### Trade Show: IRS 1993 Nationwide Tax Forum

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of IRS's 1993 Nationwide Tax Forum, Conferences and Exhibitions.

**SUMMARY:** The Alternative Ways of Filing Office of the Input Processing Division of the Internal Revenue Service is offering seven Nationwide Tax Forums, Conference and Exhibitions in 1993. Dates and locations for the Conference and Exhibitions are: July 7–8 in Boston, MA; July 20–21 in Minneapolis, MN; August 12–13 in Atlanta, GA; September 1–2 in Cincinnati, OH; September 15–16 in San Francisco, CA; September 29–30 in Seattle, WA; and October 6–7 in San Antonio, TX.

Each conference and exhibition will provide a forum, in a trade show environment, on the latest information about alternative ways of filing federal tax returns, i.e., electronic filing, 1040PC, and other IRS initiatives. It will also be an opportunity to view the latest in computer hardware and software used for electronic filing.

Vendors of computer hardware, software and other services related to electronic filing of tax return data are invited to exhibit their products during these two day shows.

Seminars will be provided for new and experienced participants in electronic tax filing. Topics covered in the seminars will include Alternative Ways of Filing, 1040PC and Forms Standardization, Joint Filing of Federal and State Tax Returns, 1994 Changes in Electronic Filing, Tax Practitioner Programs, Benefits of Filing Employee Pension Plan Returns by Electronic/Magnetic Media, Tax System Modernization (TSM), Compliance 2000, as well as others. Attendance at these seminars will qualify for Continuing Professional Education (CPE) credits.

Participants in the electronic filing program who have an application on file with the IRS or are on the Practitioner Mailing List, will receive a mail-out that details the specifics of the shows. The mail-out will also contain hotel reservation information.

**FOR FURTHER INFORMATION CONTACT:** Will Alvey, RP Exhibit Service, Inc., at (301) 773–1881 or FAX (301) 773–8742, if you are interseted in being an exhibitor. Contact your local IRS office and ask for the Electronic Filing Coordinator if you have any questions about the conferences or if you have not received the attendee brochure.

**Peggy Strunk,**

*Chief, Marketing Section.*

[FR Doc. 93–15775 Filed 7–2–93; 8:45 am]

BILLING CODE 4830–01–U

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; List of Objects

On June 18, 1993 notice was published at page 33687 of the **Federal Register** (58 FR 33687) by the United States Information Agency pursuant to Public Law 89–259, relating to the exhibit "Joan Miro." A list of the objects included in that exhibit may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is (202) 619–5078, and the address is room 700, 301 4th Street, SW., Washington, DC 20547.

Dated: June 29, 1993.

**R. Wallace Stuart,**

*Acting General Counsel.*

[FR Doc. 93–15776 Filed 7–2–93; 8:45 am]

BILLING CODE 8230–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; Report of Matching Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Internal Revenue Service (IRS) income tax records with VA pension and parents' dependency and indemnity compensation records. The match will include the records of current VA beneficiaries as well as records of former beneficiaries.

The goal of this match is to compare income as reported to VA with income tax records maintained by IRS.

The Department of Veterans Affairs (VA) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive dependency and indemnity compensation (DIC) from VA with income tax records maintained by IRS. This is a reinstatement of a matching program whose legislative authority expired September 30, 1992. Public Law 102–568, extended the matching authority to September 30, 1997. The match with IRS will provide VA with data from the IRS Wage and Information Returns (IRP) Master File. VA will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Currently, information about a VA beneficiary's receipt of income is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

*Records to be Matched:* The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1989 compilation, Volume II, pages 918–922 as amended. The IRS records consist of information from the Wage and Information Returns (IRP) Master File, Privacy Act System Treas/IRS 22.061. In accordance with title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match is estimated to start June 1, 1993, but will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 30 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

**ADDRESSES:** Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

**FOR FURTHER INFORMATION CONTACT:** David G. Spivey (213B), (202) 233–3504.

**SUPPLEMENTARY INFORMATION:** This information is required by title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

*Approved:* June 24, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

[FR Doc. 93–15882 Filed 7–2–93; 8:45 am]

BILLING CODE 8320–01–M

## OFFICE OF POLICY DEVELOPMENT

### President's Council on Sustainable Development; Meeting

**AGENCY:** Office of Policy Development.

**ACTION:** Noticing the first meeting of the President's Council on Sustainable Development.

*Time and Date:* 9 a.m.–3 p.m. Tuesday, July 20, 1993.

*Place:* Thomas L. Kimball Conference Center—National Wildlife Federation—1400 16th Street, NW.

*Status:* Open.

*Matters to be Considered:* The President's Council on Sustainable Development is a partnership of industry, labor, government, environmental organizations, not-for-profit groups, and civil rights organizations. The Council will adopt administrative procedures, establish short and long-term priorities, discuss substantive sustainable development issues.

*Contact:* Cathy Zoi—White House Office On Environmental Policy, (202) 456–6224.

(**Note:** Notice of meeting is being published less than fifteen days in advance due to holiday publication scheduling).

**Peter S. Siegel,**

*Management Analyst.*

[FR Doc. 93–16145 Filed 7–2–93; 2:06 pm]

BILLING CODE 3127–01–M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

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).

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:30 a.m., Friday, July 16, 1993.

**PLACE:** 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–1596 Filed 7–1 –93; 10:54 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, July 22, 1993.

**PLACE:** 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

**STATUS:** Open.

—Quarterly review, 3rd Quarter, FY 1993
—Final regulation prohibiting dual trading by floor brokers
—Consideration of upcoming Commission business

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, Secretary of the Commission.

[FR Doc. 93–15962 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:30 a.m., Thursday, July 22, 1993.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule enforcement review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–15963 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Thursday, July 22, 1993.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–15964 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:30 a.m., Thursday, July 22, 1993.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement objectives.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–15965 Filed 7–1–93; 10:54 am]

BILLING CODE 6351–01–M

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** Approximately 12:00 noon, Thursday, July 8, 1993, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** 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 announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 1, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–15968 Filed 7–1–93; 11:29 am]

BILLING CODE 6210–01–P

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Thursday, July 8, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*Summary Agenda:* Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed criteria for sponsoring Telecommunications Service Priority assignments. (Proposed earlier for public comment; Docket No. R–0786)

*Discussion Agenda:*

2 Publication for comment of proposed amendments to Regulation DD (Truth in Savings) regarding calculation of the annual percentage yield for certain time accounts.

3. Proposed 1994 Federal Reserve Bank budget objective.

4. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 1, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–15969 Filed 7–1–93; 11:29 am]

BILLING CODE 6210–01–P

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**NATIONAL COUNCIL ON DISABILITY**

Quarterly Meeting and Public Hearing

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability and the Council's public hearing on inclusion of students with disabilities in the mainstream of our education system. Notice of this meeting and hearing is required under Section 522b of the Government in the Sunshine Act, (P.L. 94–409).

**DATES:** August 2–5, 1993, 8:45 a.m. to 5:00 p.m.

**LOCATION:** Hyatt Regency Chicago, 151 E. Wacker Drive, Chicago, Illinois 60601, (312) 565–1234.

**FOR INFORMATION CONTACT:** Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267–3846, (202) 267–3232 (TDD).

The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. It was established in 1978 as an advisory board within the Department of Education. The Rehabilitation Act Amendments of 1984 transformed the Council into an independent agency. The mission of the National Council on Disability is to provide leadership in the identification of emerging issues affecting people with disabilities and in the development and recommendation of disability policy to the President and the Congress.

The quarterly meeting and public hearing of the National Council shall be open to the public. The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Unfinished Business
New Business
Announcements
Public Hearing on Inclusion of Students with Disabilities
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 28, 1993.

**Andrew I. Batavia,**

*Executive Director.*

[FR Doc. 93–13957 Filed 7–1–93; 10:35 am]

BILLING CODE 6820-BS-M

# Corrections

Federal Register
Vol. 58, No. 127
Tuesday, July 6, 1993

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 AGRICULTURE

### Rural Electrification Administration

### 7 CFR Part 1755

0572-AA58

### REA General Specification for Digital Stored Program Controlled Central Office Equipment (Form 522)

*Correction*

In rule document 93-12531 beginning on page 30937 in the issue of Friday, May 28, 1993, make the following corrections:

**Appendix D to 7 CFR 1755.522 [Corrected]**

On pages 30974 through 30976, beginning in the third column, in Appendix D to 7 CFR 1755.522, in paragraphs 5.4 through 8.10 and 10.3 through 10.5, wherever "1AYes" or "1ANo" appears, it should read "Yes" or "No".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 92N-0418]

### Jan T. Sturm; Debarment Order

*Correction*

In notice document 93-14645 beginning on page 33941 in the issue of Tuesday, June 22, 1993, make the following correction:

On page 33942, in the second column, beginning in the tenth line, "(*insert date of publication in the* **Federal Register**)" should read "June 22, 1993".

BILLING CODE 1505-01-D

Federal Register

Tuesday
July 6, 1993

Part II

# Department of Housing and Urban Development

## Office of the Assistant Secretary

## Public and Indian Housing Youth Sports Program; Funding Availability; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public And Indian Housing

[Docket No. N–93–3635; FR–3375–N–01]

### Public and Indian Housing Youth Sports Program; Notice of Funding Availability

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing HUD.

**ACTION:** Notice of funding availability (NOFA).

**SUMMARY:** This NOFA announces HUD's FY 1993 funding of $8,250,000 for the Youth Sports Program (YSP) to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made.

**DATES:** Application is due by August 20, 1993, at 4:30 p.m. local time, at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA.

**FOR FURTHER INFORMATION CONTACT:** Robin Prichard, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197 or 708–3502. A telecommunications device for deaf persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0140. The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Information on the estimated public reporting burden is provided as follows:

| Section of NOFA affected | Number of respondents | Number of respondents per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| III (entire) | 500 | 1 | 500 | 24 | 12,000 |
| Total annual reporting burden | | | | | 12,000 |

### I. Purpose and Substantive Description

*(a) Authority*

This program is authorized by Section 520 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101–625).

*(b) Allocation Amounts*

Section 520(k) of NAHA provides that five percent of any funding appropriated for the Drug Elimination Program shall be available for Youth Sports Program grants. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (93 App. Act) (Pub. L. 102–389, approved October 6, 1993) appropriated $175 million for the Drug Elimination Program in FY 1993. This appropriation results in $8.75 million as the amount set aside for the Youth Sports Program. However, the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) required that not more than $500,000 of any amounts made available in FY 1993 for the Youth Sports Program be set aside for a demonstration program known as the Success Through Academic and Recreational Support program, administered by the City of Fort Myers. Accordingly, $8.25 million is the amount available for the Youth Sports Program for Fiscal year 1993. Program funds are to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects.

Because of the limited amount of funding appropriated for this program, and to ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application. The maximum annual Youth Sports grant amount per applicant is $125,000. As more fully explained below, applicants must supplement grant funds with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant.

*(c) Eligibility*

(1) Eligible Applicants

Funding for this program in FY 1993 is limited to PHAs and IHAs. Although Section 520 of NAHA lists seven categories of entities qualified to receive grants (States; units of general local government; local park and recreation districts and agencies; public housing agencies (PHAs); nonprofit organizations providing youth sports services programs; Indian tribes; and Indian housing authorities (IHAs)), and HCDA 1992 section 126(b) added institutions of higher learning that have never participated in a Youth Sports program as eligible applicants, the 93 App. Act limited the funding for the Drug Elimination Program to PHAs and IHAs only. Since the funding of the Youth Sports Program is dependent on the appropriation for the Drug Elimination Program, the limitations that apply to Drug Elimination affect Youth Sports as well. Therefore, for FY 1993 only PHAs and IHAs are eligible applicants for Youth Sports Program Funding.

In designing an activity for funding, PHA and IHA applicants shall consult with RMCs/RCs where they exist, and with other entities that would be eligible for funding under this program, as listed above, with at least two years of experience in designing or operating sports, cultural, recreational, educational or other activities for youth

Eligible local entities that are affiliates of national organizations may rely on the experience of the national organization for this purpose. These consultations will provide applicants with valuable resident input and will involve entities with experience in designing and implementing the eligible types of activities under this program with PHA and IHA applicants that may not have this type of experience. These experienced entities may establish a sub-contracting relationship, in accordance with 24 CFR part 85, with the PHA/IHA if deemed appropriate by the grantee to further their public/private partnership. This consultation process will also provide entities that are not PHAs or IHAs with a greater appreciation and understanding of the operations and problems of public and Indian housing projects. The end result will be more effective program activities that make more efficient use of program funds. This result is expected because it draws upon and combines the expertise of PHA and IHA applicants with respect to the operations and problems of public and Indian housing projects, and the expertise of other entities with respect to designing and implementing youth activities.

(2) Eligible Activities

Youth Sports Program funds may be used to assist in carrying out sports, cultural, recreational, educational or other activities for youth in any of the following manners:

(i) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds is an eligible activity under the Youth Sports Program.

(A) Acquisition, construction or rehabilitation costs shall not be approved unless the applicant demonstrates the need for the type of facilities to be assisted by the grant (Section III.(a)(3) of this NOFA).

(B) Facilities that receive Youth Sports funding must be used primarily for youth from the public or Indian housing projects in which the funded facility is operated (Section III.(a)(2)(ii) and III.(a)(10)(iii) of this NOFA).

(C) Facilities (community centers, parks, or playgrounds) acquired, constructed, or rehabilitated under this program must be on or adjacent to the premises of the public housing project identified in the application for assistance under this program. In the case of Indian Housing Authorities, the applicant must specify how youth from IHA projects will have access to the facility, since IHAs often cover large areas (Section III.(a)(9) of this NOFA).

(D) Facilities receiving Youth Sports funding must comply with any applicable local or tribal building requirements for recreational facilities (Section III.(a)(2)(iii) of this NOFA).

(E) Facilities receiving Youth Sports funding must be used exclusively for Youth Sports activities commensurate with the extent of the Youth Sports funding. For example, if a facility is funded 60 percent by a Youth Sports grant, then it must be used at least 60 percent for Youth Sports activities.

(F) In accordance with the requirements of 24 CFR 8.21, facilities should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, make them made readily accessible to and usable by individuals with handicaps.

(G) In accordance with the requirements of 24 CFR 8.20, no qualified applicant with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(ii) Redesigning or modifying public spaces in public or Indian housing projects to provide increased utilization of the areas by Youth Sports activities is an eligible activity under this program.

(A) The construction of sports facilities on public or Indian housing property to implement Youth Sports activities is permitted under this program. These facilities may include, but not be limited to, baseball diamonds, basketball courts, football fields, tutoring centers, swimming pools, soccer fields, public or Indian housing community centers, and tennis courts.

(iii) Provision of public services, including salaries and expenses for staff of youth sports programs, cultural activities, transportation costs, educational programs relating to drug abuse, and sports and recreation equipment are eligible activities under this program.

(A) Educational programs for youth relating to illegal drug use are permitted under this section. The program must be formally organized and provide the knowledge and skills youth need to make informed decisions on the potential and immediate dangers of drug abuse and involvement with illegal drugs. Grantees may contract with drug education professionals to provide the appropriate training or workshops. These educational programs may be part of organized sports activities or other eligible youth activities.

(B) Activities providing an economic/educational orientation for Youth Sports Program participants are eligible for funding as public services. These activities must provide, for public or Indian housing youth, the opportunities for interaction with, or referral to, higher educational or vocational institutions, and develop the skills of program participants to pursue educational, vocational, and economic goals. These activities may also provide public or Indian housing youth the opportunity to interact with private sector businesses in their community with the purpose of promoting the development of educational, vocational, and economic goals in public or Indian housing youth.

(C) The cost of the initial purchase of sports and recreation equipment to be used by program participants is permitted under this program.

(D) Cultural and recreational activities, such as ethnic heritage classes, and art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(E) Youth leadership skills training for program participants is permitted under this program. These activities must provide opportunities designed to involve public and Indian housing youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supplies managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, goal planning, parenting skills, and other relevant topics.

(F) Transportation costs directly related to Youth Sports activities (for example, leasing a vehicle to transport a Youth Sports team to a game) are eligible program expenses.

(G) The purchase of vehicles under this program is prohibited.

(H) Liability insurance costs directly related to Youth Sports activities are eligible program expenses.

(3) Threshold Requirements for Funding

Every activity proposed for funding under the Youth Sports Program must satisfy each of the following requirements or it will not be considered for funding:

(i) The activity must be operated as, in conjunction with, or in furtherance of, an organized program or plan designed to eliminate drugs and drug-

related problems in the public or Indian housing project or projects for which the activity is proposed. (See, Section III.(a)(7), below, of this NOFA.)

(ii) The activity for which funding is sought must be conducted with respect to public or Indian housing sites that HUD determines have a substantial problem regarding the use or sale of illegal drugs.

(A) The determination required in paragraph (ii) will be made on the basis of information submitted in the applicant's plan as described below in "Checklist of Application Submission Requirements," Section III.(a)(7).

(iii) The activities or facilities funded by Youth Sports grants must serve primarily youth from the public or Indian housing projects for which the activities or facilities are operated. (See, Section III.(a)(10), below.)

(iv) Applicants must provide a workplan detailing a timeline for the implementation of activities and a budget for the activity or activities for which funding is sought, as required by Sections III.(a)(4) and (5), below.

(v) Applicants must be able to supplement the amount provided by a grant under the Youth Sports Program with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant. (*See* Section III.(a)(2)(ii), below.) Funds from non-Federal sources are funds the applicant receives for the Youth Sports activities identified in its application from the following:

(A) States;

(B) Units of general local government or agencies of such governments;

(C) Indian tribes;

(D) Private contributions;

(E) Any salary paid to staff to carry out the Youth Sports activities of the applicant, computed as follows:

(*1*) Only that portion of staff salaries representing time that will be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources;

(*2*) Staff salaries that are paid with Youth Sports funds do not qualify as funds from non-Federal sources for the purpose of this program;

(F) The value of the time and services contributed by volunteers to carry out the program of the grant recipient to be determined as follows:

(*1*) Except as set out in paragraph (*2*), below, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour;

(*2*) Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary hourly rate paid for the service in the community where the Youth Sports activity is located;

(G) The value of any donated material, equipment, or building, computed on the basis of the fair market value of the donated item(s) at the time of the donation;

(*1*) The applicant must document the fair market value of donated items by referencing bills of sale, advertised prices, or appraisals, not more than one year old and taken from the community where the item or the Youth Sports activity is located (whichever is more appropriate), of identical or comparable items;

(H) The value of any lease on a building, or part of a building, computed on the basis of the fair market value of a lease for similar property similarly situated.

(*1*) The applicant must document the fair market value of a lease by referencing an existing, or no more than one year old, lease from the building involved; or evidence, such as advertisements or appraisals, of the value of leases for comparable buildings.

(vi) Grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program may not be used to replace other public funds previously used, or designated for use, for the purpose of this program. (See, Section III.(a)(2)(vi).

*(d) Selection Criteria*

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Indian Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. An application must receive a minimum score of 75 points out of the maximum of 120 points awardable under this competition to be eligible for funding. Grants will be awarded to the three highest-ranked, eligible PHA applications within each region. In addition, grants will be awarded to the three highest-ranked, eligible IHA applications on a nation-wide basis. All of the remaining eligible applications, both PHAs and IHAs, will then be placed in overall nation-wide ranking order, with the remaining funds granted in order of rank until all funds are awarded. The following criteria will be used to evaluate eligible applications:

(1) The extent to which the Youth Sports activities to be assisted with the grant address the particular needs of the area to be served by the activities and employs methods, approaches, or ideas in the design or implementation of the activities particularly suited to fulfilling the needs (whether such methods are conventional or unique and innovative). (Maximum points: 25). In assessing this criterion, HUD will consider the following factors:

(i) The appropriateness of the applicant's methods, approaches, or ideas in addressing the particular needs of the area to be served by the program, as reflected in the description of the services to be provided by the applicant's proposed Youth Sports Program (Section II.(a)(3) of this NOFA); (10 points)

(ii) The resources committed to each activity and service (Section III.(a)(5) of this NOFA) proposed for funding in the application; (5 points)

(iii) An estimate of the number of youth from public or Indian Housing projects that will be involved in the applicant's proposed activities, in accordance with Section III.(a)(8) of this NOFA. (5 points)

(iv) The applicant's explanation of the procedures that will be followed to ensure that the Youth Sports activities will serve primarily youth from the public or Indian housing project in which the program to be assisted by a grant is operated, as required by Section III.(a)(10)(iii). (5 points)

(2) The technical merit of the application of the qualified applicant. (Maximum points: 10). In assessing this criterion HUD will consider the following factor:

(i) The quality and thoroughness of the statement required in the application (Section III.(a)(6) of this NOFA) regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria for this program. (10 points)

(3) The qualifications, capabilities, and experience of the personnel and staff of the sports program who are critical to achieving the objectives of the program as described in the application. (Maximum points: 15) In assessing this criterion HUD will consider the following factors:

(i) The position descriptions of staff critical to achieving the objectives of the applicant's program, required under Section III.(a)(10)(ii) of this NOFA; (10 points)

(ii) The nature of the duties volunteers will perform, required under Section III.(a)(10)(ii) of this NOFA. (5 points)

(4) The capabilities, related experience, facilities, and techniques of the applicant for carrying out its youth sports program and achieving the

objectives of its program as described in the application, and the potential of the applicant for continuing the youth sports program. (Maximum points: 30) In assessing this criterion HUD will consider the following factors:

(i) The related experience of the applicant, as evidenced by its staff, and of the entity consulted by the applicant in preparing its application, in conducting the type of activities, in public or Indian housing, for which funding is requested (Section III.(a)(10)(i) and (ii) of this NOFA); (10 points)

(ii) The appropriateness, in terms of need, size, location, and suitability, of the facilities to be used for youth activities (Section III.(a)(9) of this NOFA); (5 points)

(iii) The applicant's workplan and implementation schedule for the Youth Sports activities for which funding is sought (Section III.(a)(4) of this NOFA); (10 points)

(iv) The extent of the resources committed to continue the operation of Youth Sports activities and facilities beyond the grant term included in the applicant's description of plans to continue the Youth Sports activities in the future, as required in Section III.(a)(12) of this NOFA. (5 points)

(5) The severity of the drug problem at the local public or Indian housing site for the youth sports program and the extent of any planned or actual efforts to rid the site of the problem. (Maximum points: 10) In assessing this criterion HUD will consider the following factors:

(i) The extent of the drug-related problems at the housing projects to be assisted, as established in the applicant's plan required by Section III.(a)(7) of this NOFA; (5 points)

(ii) The extent of any planned or actual efforts to rid the housing projects to be assisted of their drug-related problem, as described in the applicant's plan required by Section III.(a)(7) of this NOFA. (5 points)

(6) The extent to which local sports organizations or sports figures are involved. (Maximum points: 5 points) In assessing this criterion, HUD will consider the following factor:

(i) The documentation provided in the application of the level of on-site or other participation by local sports, cultural, recreational, educational, or other community organizations or figures that is focused on the specific youth activities for which the application is prepared (Section III.(a)(11) of this NOFA). (5 points)

(7) The extent of the coordination of proposed activities with local resident management groups or resident associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of the Youth Sports program. (Maximum points: 15) In assessing this criterion, HUD will consider the following factors:

(i) The applicant's description of its consultations with resident management groups or resident associations, where they exist, and residents, as required by Section III.(a)(7) of this NOFA; (10 points)

(ii) The extent to which the applicant demonstrates the relationship of the Youth Sports activities with other existing anti-drug activities, if any, in the housing projects to be assisted as reflected in the applicant's plan required by Section III.(a)(7) of this NOFA. (5 points)

(8) The extent of non-Federal contributions that exceed the fifty percent amount of such funds required. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's budget describing the share of the costs of the applicant's Youth Sports Program provided by a grant under this program and the share of the costs provided from funds from non-federal sources and other resources, such as the number of volunteers and volunteer hours committed, submitted in accordance with Section III.(a)(5) of this NOFA. (5 points)

(9) The extent to which the applicant demonstrates local government or tribal support for the program. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's description of local or tribal government support as evidenced by contributions from these entities listed under Section III.(a)(5) of this NOFA. (5 points)

## II. Application Process

(a) An application package may be obtained from the local HUD field office or by calling HUD's Drug Information and Strategy Clearinghouse on 800–245–2691. The application package contains information on all exhibits and certifications required under this NOFA.

(b) The deadline for the submission of grant applications under this NOFA is [insert 45 days after FEDERAL REGISTER publication]. In order to be eligible, the original and two copies of the application must be physically received by 4:30 PM, local time, on the deadline date at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA, Attention: Public Housing Division Director, or Office of Indian Programs Director. A list of these offices is included as Appendix 1 to this NOFA. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A FAX is not acceptable.

## III. Checklist of Application Submission Requirements

(a) Each application for a grant under this program must include the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The following certifications, executed by the CEO of the applicant:

(i) A certification that the applicant will supplement the amount provided by a grant under this program with an amount of funds from non-federal sources equal to or greater than 50 percent of the amount provided by the grant;

(ii) A certification that the activities or facilities funded by the Youth Sports grant will serve primarily youth from the public or Indian housing projects in which the activities or facilities are operated;

(iii) A certification that facilities receiving Youth Sports funding comply with any applicable local or tribal building requirements for recreational facilities;

(iv) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(v) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in 24 CFR part 87 (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.);

(vi) A certification that grant funds provided under this program and any State, tribal, or local funds used to

supplement grant funds under this program will not be used to replace other public funds previously used, or designated for use, for the purpose of this program.

(vii) A certification that the applicant has assessed its potential liability arising out of Youth Sports activities, has considered any limitations on liability under State, local or tribal law, and that, upon being notified of a Youth Sports grant award, the applicant will obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program.

(viii) *Civil Rights.* A certification from the applicant that:

(A) It will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and with HUD regulations at 24 CFR part 1, which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structures which are provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits;

(B) It will comply with the Fair Housing Act (42 U.S.C. 3601–3620) and with implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and will administer its programs and activities relating to housing in a manner affirmatively to further fair housing;

(C) It will comply with Executive Order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR part 107, which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with federal financial assistance;

(D) It will comply with Executive Order 11246 and its implementing regulations at 42 CFR chapter 60–1, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal contracts, and that affected persons shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in 24 CFR 130.5, the equal opportunity clause required by § 130.15(b);

(E) It will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701a), and with implementing regulations at 24 CFR part 135, which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project and contracts for work in connection with the project be awarded in substantial part to persons residing in the area of the project;

(F) It will comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and with implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in federally assisted and conducted programs and activities;

(G) It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, which prohibit discrimination against persons because of age in projects and activities receiving federal financial assistance;

(H) It will comply with Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and by women.

(3) A description of the nature of the services to be provided by the applicant's proposed Youth Sports Program, including an explanation of the way in which the activities or facilities proposed for funding address the particular needs of the area to be served by the program.

(4) A workplan with an 18 months maximum task timeline providing an implementation schedule for the Youth Sports activities.

(5) A budget describing the financial and other resources committed to each activity and service of the program. The budget must identify the share of the costs of the applicant's Youth Sports activities provided by a grant under this program and provide a narrative describing how the share of the costs provided from other sources of funds (e.g., local or tribal government, corporations, individuals), including funds from non-Federal sources, will be obtained.

(6) A statement regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria in Section I.(d), above.

(7) A plan designed to eliminate drugs and drug-related problems on the premises of the housing projects proposed for funding. Applicants are given a choice to satisfy this requirement in one of two ways. First, an applicant may submit a current-year plan prepared for the housing projects in accordance with 24 CFR 961.15 as a part of a Drug Elimination Program grant. In this case, the applicant must indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in futherance of the 961.15 plan. The other choice is that an applicant may submit an abbreviated plan prepared for this NOFA as follows:

(i) The plan must describe the drug-related problems in the projects that are proposed for funding under this program, using:

(A) Objective data, if available, from the local police precinct or the PHA's or IHA's records on the types, number and sources of drug-related crime in the projects proposed for assistance. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the records of Resident Management Corporations (RMCs), Resident Corporations (RCs), or other resident associations. The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(B) Information from other sources which has a direct bearing on drug-related problems in the projects proposed for assistance. Examples of these data are: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police.

(ii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related problems in the targeted projects. Any efforts being undertaken by community and governmental entities, residents of the project, Resident Management Corporations (RMCs), Resident Corporations, (RCs), other resident associations, or any other entities to address the drug-related problems in the projects proposed for assistance must be described. The applicant must also indicate how its proposed Youth Sports activities will be

operated as, in conjunction with, or in furtherance of the other activities described in the plan.

(8) An estimate of the number of youth involved.

(i) The applicant must provide the total estimated number of youth involved for each proposed activity and participating in youth leadership assignments (for example, team managers, assistant managers, team captains) computed on an annual and, if applicable, a session or seasonal basis (for example, classes or league sports may be organized in sessions or seasons that run for a certain number of weeks or months, or more activities may take place and more youth may be involved on weekends than on weekdays).

(ii) The total estimated number given for each activity must be further broken down by categories of age (e.g., 5–8 years old, 9–12 years old, etc.), sex (male, female, co-ed), and residency in public or Indian housing.

(9) A description of the facilities used.

(i) Facilities to be used for Youth Sports activities must be described in the application with regard to their dimensions, location, and the number of youth that can be accommodated at one time.

(A) In the case of an Indian housing project, if a facility to be acquired, constructed, or rehabilitated is not located on or adjacent to the premises of the project to be assisted, the application must specify how youth from the Indian housing project will have access to the facility (e.g., transportation will be provided, transportation service is readily available.)

(ii) Where applicable, the application must provide a detailed explanation of all facility acquisition, construction, rehabilitation, operation, redesign or modification proposed for funding under this program.

(A) The application must specify what percent of the facility will be used for youth activities (as opposed to, for example, senior citizen or adult activities). This percentage may not be less than the percentage of Youth Sports funding provided for the facility.

(iii) The application must identify the entity that will be responsible for the operation of any facility funded by a Youth Sports grant.

(10) A description of the organization of the applicant's proposed Youth Sports program, which must detail:

(i) The consultations entered into by the applicant with RMCs/RCs, where they exist, and other entities experienced in the design and implementation of the type of proposed youth sports activities;

(ii) The position descriptions of the staff that will be responsible for managing and operating the Youth Sports activities must be included in the application; if volunteers are involved, their number, job descriptions, and hours per week of involvement must be included;

(iii) The procedures that will be followed to ensure that the Youth Sports activities or facilities will serve primarily youth from the public or Indian housing project in which the program to be assisted by a grant is operated must be explained in the application.

(11) A description of the extent of involvement of local sports organizations or sports figures.

(i) The applicant must provide documentation of the level of on-site or other participation by local and nationally affiliated sports organizations, except as provided in Section (ii) below, with at least two years of organizational and operational experience. These may include, but are not limited to, strictly sports organizations, such as Little Leagues, Midnight Basketball, or professional teams. Participation by cultural, recreational, or educational organizations is also permissible. The participation of these groups must be focused on the youth activities for which the application is prepared.

(ii) The applicant may demonstrate the involvement of local or national sports, cultural, recreational or educational figures, such as athletes, coaches, artists, entertainers and teachers in place of, or in addition to, the participation of organizations. The participation of these figures must be focused on the youth activities for which the application is prepared.

(12) A description of plans and resources to continue the Youth Sports activities beyond the grant term under this program, including the commitment of entities (e.g., local and tribal governments, corporations, community organizations) and individuals to continue their involvement in the applicant's Youth Sports activities and facilities.

(13) HUD Form 2880.

## IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) Are not necessary for HUD review under selection criteria/ranking factors; and

(2) Cannot be submitted after the application due date has expired, to improve the substantive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

## V. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact (FONSI) with respect to the environment for the FY 1991 NOFA has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Since the requirements of this FY 1993 NOFA are identical to those of the FY 1991 NOFA, the FONSI prepared for the FY 1991 NOFA will apply to this NOFA, as it did to the FY 1992 NOFA for the same reasons. The FONSI is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20401. HUD will review all applications and their proposed activities in accordance with the environmental requirements of 24 CFR Part 50.

(b) *Federalism Impact.* The General Counsel, as the designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) *Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that

provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program is intended to improve the quality of life of public and Indian housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) *Section 102 HUD Reform Act. Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

*Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) *Section 103 HUD Reform Act.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Section 112 HUD Reform Act.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 2291). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

**Authority:** Sec. 520, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101–625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated : June 22, 1993.

**Michael B. Janis,**

*General Deputy, Assistant Secretary for Public and Indian Housing.*

**Appendix Listing of: HUD Regional Offices, Category A and B Field Offices, and Other Field Offices With Delegated Public Housing Responsibilities, and Offices of Indian Programs**

*Region I*

Jurisdictions: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

*Boston, Massachusetts Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St., Room 375, Boston, MA 02222–1092, (617) 565–5234. TDD Number: (Commercial) (617) 565–5453

*Hartford, Connecticut Office–A*

Manager, HUD—Hartford Office, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4523. TDD Number: (Commercial) (203) 240–4522

*Manchester, New Hampshire Office–B*

Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681. TDD Number: (Commercial) (603) 666–7518

*Providence, Rhode Island Office–B*

Manager, HUD—Providence Office, 330 John O. Pastore Federal Building & U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785. (401) 528–5351. TDD Number: (Commercial) (401) 528–5364

*Region II*

Jurisdictions: New York, New Jersey

*New York Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–8068. TDD Number: Commercial number not available

*Buffalo, New York Office–A*

Manager, HUD—Buffalo Office, Lafayette Court, 5th Fl., 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755. TDD Number: Commercial number not available

*Newark, New Jersey Office–A*

Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New

Jersey 07102–5504, (201) 877–1662. TDD Number: (Commercial) (201) 645–6649

*Region III*

Jurisdictions: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

*Philadelphia, Pennsylvania Regional Office*

Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th St., Philadelphia, Pennsylvania 19106–3392, (215) 597–2560. TDD Number: (Commercial) (215) 597–5564

*Washington, D.C. Office–A*

Manager, HUD—Washington Office, Union Center Plaza, Phase III, 820 First St. NE., suite 300, Washington, DC 20002–4502, (202) 275–9200. TDD Number: (Commercial) (202) 275–0967

*Baltimore, Maryland Office–A*

Manager, HUD—Baltimore Office, 10 North Calvert St., 3rd, Fl., Baltimore, Maryland 21202–1865, (301) 962–2121. TDD Number: (Commercial) (301) 962–0106

*Pittsburgh, Pennsylvania Office–A*

Manager, HUD—Pittsburgh Office, 412 Old Post Office Courthouse Building, 7th Ave., & Grant St., Pittsburgh, Pennsylvania 15219–1906, (412) 644–6428. TDD Number: (Commercial) (412) 644–5747

*Richmond, Virginia Office–A*

Manager, HUD—Richmond Office, 400 North 8th St., Richmond, Virginia 23240 (804) 771–2721. TDD Number: (Commercial) (804) 771–2820

*Charleston, West Virginia Office–B*

Manager, HUD—Charleston Office, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000. TDD Number: (Commercial) (304) 347–5332

*Region IV*

Jurisdictions: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

*Atlanta, Georgia Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring St., S.W., Atlanta, Georgia 30303–3388, (404) 331–5136. TDD Number: (Commercial) (404) 730–2654

*Birmingham, Alabama Office–A*

Manager, HUD—Birmingham Office, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 731–1617. TDD Number: (Commercial) (205) 290–7624

*Louisville, Kentucky Office–A*

Manager, HUD—Louisville Office, 601 W. Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251. TDD Number: Commercial number not available

*Jackson, Mississippi Office–A*

Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol St., Room, 910, Jackson, Mississippi 39269–1096, (601) 965–4738. TDD Number: (Commercial) (904) 232–1241

*Greensboro, North Carolina Office–A*

Manager, HUD—Greensboro Office, 415 North Edgewood St., Greensboro, North Carolina 27401–2107, (919) 333–5361. TDD Number: (Commercial) 919–547–4055

*Caribbean Office–A*

Manager, HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Ave., San Juan Puerto Rico 00918–1804, (809) 766–5201. TDD Number: Commercial number not available

*Columbia, South Carolina Office–A*

Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592. TDD Number: Commercial number not available

*Knoxville, Tennessee Office–A*

Manager, HUD—Knoxville Office, John J. Duncan Federal Building, 710 Locust St., SW., Knoxville, Tennessee 37902–2526, (615) 549–9384. TDD Number: (Commercial) (615) 545–4379

*Nashville, Tennessee Office–B*

Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213. TDD Number: (Commercial) (615) 736–2886

*Jacksonville, Florida Office–A*

Manager, HUD—Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, Florida 32202–5121, (904) 232–2626. TDD Number: (Commercial) (904) 232–1241

*Region V*

Jurisdictions: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

*Chicago, Illinois Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Chicago Regional Office, 626 West Jackson Blvd., Chicago, IL 60606–5601, (312) 353–5680. TTD Number: (Commercial) (312) 353–7143

*Chicago—Office of Indian Programs*

Director, HUD—Chicago—Office of Indian Programs, 626 West Jackson Blvd., Chicago, IL 60606–1683, (312) 353–1683. TDD Number: (Commercial) (312) 353–7143

*Detroit, Michigan Office–A*

Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900. TDD Number: Commercial number not available

*Indianapolis, Indiana Office–A*

Manager, HUD—Indianapolis Office, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303. TDD Number: Commercial number not available

*Grand Rapids, Michigan Office–B*

Manager, HUD—Grand Rapids Office, 2922 Fuller Ave., NE., Grand Rapids, Michigan 49505–3499, (616) 456–2100. TDD Number: Commercial number not available

*Minneapolis-St. Paul, Minnesota Office–A*

Manager, HUD—Minneapolis-St. Paul Office, 220 2nd St. S., Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3002. TTD Number: (Commercial) (612) 370–3186

*Cincinnati, Ohio Office–B*

Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884. TDD Number: (Commercial) (513) 684–6180

*Cleveland, Ohio Office–B*

Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Ave., Rm. 420, Cleveland, Ohio 44114–1670, (216) 522–4065. TDD Number: Commercial number not available

*Columbus, Ohio Office–A*

Manager, HUD—Columbus Office, 200 N. High St., Columbus, Ohio 43215–2499, (614) 469–5737. TDD Number: Commercial number not available

*Milwaukee, Wisconsin Office–A*

Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214. TDD Number: Commercial number not available

*Region VI*

Jurisdictions: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

*Fort Worth, Texas—Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401. TDD Number: (Commercial) (817) 885–5447

*Houston, Texas Office–B*

Manager, HUD—Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 653–3274. TDD Number: Commercial number not available

*San Antonio, Texas Office–A*

Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (512) 229–6800. TDD Number: (Commercial) (512) 229–6885

*Little Rock, Arkansas–A*

Manager, HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201, (501) 324–5931. TDD Number: (Commercial) (501) 324–5931

*New Orleans, Louisiana–A*

Manager, HUD—New Orleans Office, Fisk Federal Building, 1661 Canal St., P.O. Box 70288, New Orleans, Louisiana 70112–2887, (504) 589–7200. TDD Number: None available

*Oklahoma City, Oklahoma Office–A*

Manager, HUD—Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th St., Oklahoma City, Oklahoma 73102–3202, (405) 231–4181. TDD Number: (Commercial) (405) 231–4891

*Oklahoma City—Indian Programs Division*

Director, HUD—Oklahoma City Office IPD, Murrah Federal Building, 200 N.W. 5th St., Oklahoma City, OK 73102–3202, (405) 231–4102. TDD Number: Commercial number not available

*Albuquerque, NM Office–C*

Manager, HUD—Albuquerque Office, 625 Truman Street N.E., Albuquerque, NM 87110–6443, (505) 262–6463. TDD Number: (Commercial) (505) 262–6463

*Region VII*

Jurisdictions: Iowa, Kansas, Missouri, Nebraska

*Kansas City, Kansas—Regional Office*

Regional Administrator, Regional Housing Commissioner, Kansas City Regional Office, Gateway Tower II, 400 State Ave., Kansas City, Kansas 66101–2506, (913) 236–2162. TDD Number: (Commercial) (913) 236–3972

*Omaha, Nebraska Office–A*

Manager, HUD—Omaha Office, Braiker/Brandeis Building, 210 S. 16th St., Omaha, Nebraska 68102–1622, (402) 221–3703. TDD Number: (Commercial) (402) 492–3183

*St. Louis, Missouri Office–A*

Manager, HUD—St. Louis Office, 1222 Spruce St., St. Louis, Missouri 63103–2836, (314) 539–6583. TDD Number: (Commercial) (314) 539–6331

*Des Moines, Iowa Office–B*

Manager, HUD—Des Moines Office, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512. TDD Number: (Commercial) (515) 284–4728

*Region VIII*

Jurisdictions: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

*Denver, Colorado—Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Denver Regional Office, Executive Office Building, 1405 Curtis St., Denver Colorado 80202–2349, (303) 844–4513. TDD Number: (Commercial) (303) 844–6158

*Denver, Colorado—Office of Indian Programs*

Director, HUD—Denver Office OIP, Executive Tower Building, 1405 Curtis St., Denver, CO 80202–2349, (303) 844–4513. TDD Number: (Commercial) (303) 844–6158

*Region IX*

Jurisdictions: Arizona, California, Hawaii, Nevada, Guam, America Samoa

*San Francisco, California—Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752. TDD Number: (Commercial) (415) 556–8357

*Phoenix, Arizona—Region IX Indian Programs Office*

Director, HUD—Phoenix Office of Indian Programs, Two Arizona Center, Suite 1650, Phoenix, Arizona 85004, (602) 379–4156. TDD Number: (Commercial) (602) 379–4461

*Honolulu, Hawaii Office–A*

Manager, HUD—Honolulu Office, 300 Ala Moana Blvd., Rm. 3318, Honolulu, Hawaii 96850–4991, (808) 541–1323. TDD Number: (Commercial) (808) 541–1356

*Los Angeles, California Office–A*

Manager, HUD—Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122. TDD Number: (Commercial) (213) 251–7038

*Sacramento, California Office–B*

Manager, HUD—Sacramento Office, 777 12th Ave., Suite 200, P.O. Box 1978, Sacramento, California 96814–1997, (916) 551–1351. TDD Number: (Commercial) (916) 561–1367

*Phoenix, Arizona Office–B*

Manager, HUD—Phoenix Office, Two Arizona Center, 400 N. 5th St., Phoenix, Arizona 85004–2361, (602) 261–4434. TDD Number: (Commercial) (602) 379–4461

*Region X*

Jurisdictions: Alaska, Idaho, Oregon, Washington

*Seattle, Washington—Regional Office*

Regional Administrator, Regional Housing Commissioner, HUD—Seattle Regional Office, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, Washington 98104–1000, (206) 220–5290. TDD Number: (Commercial) (206) 220–4351

*Seattle, Washington—Office of Indian Programs*

Director, HUD—Office of Indian Programs, Arcade Plaza Building, 1321 2nd Ave., Seattle, WA 98101–2058, (206) 553–0330. TDD Number: (Commercial) (206) 553–4351

*Portland, Oregon Office–A*

Manager, HUD—Portland Office, Cascade Building, 520 S.W. 6th Ave., Portland, Oregon 97203–1596, (503) 326–2561. TDD Number: (Commercial) (503) 326–3656

*Anchorage, Alaska Office–A*

Manager, 222 West 8th Avenue, #64, Anchorage, Alaska 99513–7537, (907) 271–4170. TDD Number: Commercial not available

Director, Anchorage—Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513, (907) 271–4170.

[FR Doc. 93–15761 Filed 7–2–93; 8:45 am]

BILLING CODE 4210–33–M

federal register

Tuesday
July 6, 1993

Part III

# Department of the Interior

## Bureau of Indian Affairs

## Indian Gaming; Chitimacha Tribe of Louisiana; Tribal-State Compact; Notice

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming; Chitimacha Tribe of Louisiana

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Tribal-State Compact for the Conduct of Class III Gaming Between the Chitimacha Tribe of Louisiana and the State of Louisiana, which was enacted on February 15, 1993.

**DATES:** This action is effective July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 18, 1993.

**Ron Eden,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 93–15774 Filed 7–2–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
July 6, 1993

Part IV

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Public and Indian Housing

## Notice of Fund Availability (NOFA) for Fiscal Year 1993, and Program Guidelines for the Family Unification Demonstration Programs; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3634; FR 3381–N–01]

### Notice of Fund Availability (NOFA) for Fiscal Year 1993, and Notice of Program Guidelines for the Family Unification Demonstration Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of fund availability (NOFA) for Fiscal Year (FY) 1993; and notice of program guidelines for the Family Unification Demonstration Program.

**SUMMARY:** This notice announces the availability of FY 1993 budget authority for a national competition to award funding for section 8 rental certificates under the Family Unification Demonstration Program, and also sets forth program guidelines for this demonstration program. This Notice invites public housing agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds. The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation, of children from their families.

Participation in the Family Unification Demonstration Program for Fiscal Year 1992 was limited, under the VA, HUD-Independent Agencies Appropriations Act for FY 1992, to PHAs in the following 11 States: California, Florida, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Texas. As provided by the Senate Committee Report to the VA, HUD Independent Agencies Appropriations Act of 1993, HUD has selected the following five additional States to participate in the FY 1993 Family Unification Demonstration Program: Georgia, Illinois, Minnesota, North Carolina and Virginia. The selection of these five States was based on the caseload of families with children in foster care within these States. The information concerning families with children in foster care was provided to HUD by the Administration for Children and Families at the U.S. Department of Health and Human Services (HHS).

Accordingly, HAs in the following States are invited by this notice to submit applications for rental certificates under this demonstration program: California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia.

This NOFA contains information for HAs in the 16 States listed above regarding the allocation of rental certificate budget authority, the application process, including the application requirements and the deadline for filing applications, the selection criteria and the selection process.

**DATE:** The due date for submission of applications in response to this NOFA is August 20, 1993. Application forms may be obtained from the local HUD Field Office/Indian Programs Office. Applications must be received in the local HUD Field Office/Indian Programs Office on the due date by 3:00 p.m. local time. The local Field Offices are the official place of receipt for all applications. At the time of, or immediately following, the submission of the application to the Field Office, the HA also must submit a copy of the application for funding under this NOFA to the following address: U.S. Department of Housing and Urban Development, Mr. Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, room 4220, 451 Seventh Street, SW., Washington, DC 20410.

The above-stated application deadline for submission of completed applications to the Field Offices/Indian Programs Offices is firm as to date and hour. In the interest of fairness to all competing HAs, the Department will treat as ineligible for consideration any application that is not received before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problem(s). HUD will not accept applications sent via facsimile (FAX) transmission.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has approved the section 8 information collection requirements under the assigned control number 2577–0123.

**I. Purpose and Substantive Description**

*(A) Authority*

The Family Unification Demonstration Program is authorized by section 8(x) of the U.S. Housing Act of 1937, as added by section 553 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (42 U.S.C. 1437f(x)); the VA, HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991) (HUD Appropriations Act of 1992), and the VA, HUD-Independent Agencies Act of 1992 (Pub. L. 102–389, approved October 6, 1992) (Appropriations Act of 1993). The regulations governing the section 8 rental certificate program are codified at 24 CFR part 882.

*(B) Background*

The Family Unification Program is a demonstration program under which section 8 housing assistance is provided to families for whom the lack of adequate housing is a primary factor which would result in:

(1) the imminent placement of the family's child, or children, in out-of-home care, or

(2) the delay in the discharge of the child, or children, to the family from out-of-home care.

The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families. (Lack of adequate housing is defined in Section II(A) of this NOFA.)

Certificates awarded under the Family Unification Demonstration Program are to be administered by HAs under HUD's current regulations for the section 8 rental certificate program (24 CFR part 882). The HA may issue a rental voucher to a family selected for participation in the Family Unification Program if the family requests a rental voucher and the HA has one available. In accordance with the Senate Committee Report to the HUD

Appropriations Act for 1993, the demonstration program funding available in FY 1993 is provided for use in 16 States. These 16 States are identified in the "Summary" and in Section I(D) of this NOFA.

*(C) Allocation Amounts*

Of the amounts made available by the HUD-Appropriations Act for FY 1993, up to $75 million of budget authority for the section 8 rental certificate program is earmarked for the Family Unification Demonstration Program. This amount will support approximately 2,200 section 8 rental certificates. Each HA may apply for funding for a maximum of 100 units. The minimum funding amount is for 25 units. Any HA that is unwilling to accept less than the number of units for which it applies must state this in its cover letter to its application, and must state the minimum number it is willing to accept.

The amounts allocated under this NOFA will be awarded under a national competition based on demonstrated need for such assistance. The Family Unification Demonstration Program is exempt from section 213(d) of the Housing and Community Development Act of 1974 (which requires that funds be allocated on a fair share basis), and from 24 CFR part 791, subpart D, the HUD regulation implementing section 213(d).

*(D) Eligibility*

HAs in the following 16 States are invited by this notice to submit applications for rental certificates under this demonstration program: California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia.

*(E) Family Self-Sufficiency Program*

Section 23 of the U.S. Housing Act of 1937, which established the Family Self-Sufficiency (FSS) Program, was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that all PHAs receiving additional rental vouchers or certificates in FY 1993 must establish a local FSS program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the **Federal Register** on September 30, 1991 (56 FR 49592). The interim and final rules for the FSS program were published in the **Federal Register** on May 27, 1993, at 58 FR 30858 and 58 FR 30906, respectively. (The FSS final rule simply adopts the FSS interim rule as the FSS final regulations.) Unless specifically excepted by HUD, any rental voucher or rental certificate funding reserved in FY 93 will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published in the **Federal Register** on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

**II. Application Process**

*(A) Program Guidelines*

(1) Definitions: For purposes of the Family Unification Demonstration Program:

(a) "Family Unification eligible family" means a family:

(i) which the public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care; and

(ii) which the HA has determined is eligible for section 8 rental assistance.

(b) "Lack of adequate housing" means a situation in which a family:

(i) is living in substandard housing or homeless, as defined in 24 CFR 882.219(f); or

(ii) is, or will be, involuntarily displaced from a housing unit because of actual or threatened violence against a family member under the circumstances described in 24 CFR 882.219(d)(2).

(c) Public child welfare agency (PCWA) means the public agency that is responsible under applicable State or Tribal law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(2) HA Responsibilities. HAs must:

(a) Send a partial listing of the names of families on the section 8 waiting list to the PCWA to determine if the families meet the Family Unification eligibility requirements described in Section II(A) of this NOFA. The HA will continue to send a list of family names to the PCWA until the number of families is equal to the number of rental certificates provided to the HA under the Family Unification Program. Families must be referred to the PCWA based on their positions on the section 8 waiting list. Families will be selected for participation after the PCWA determines that the family meets the Family Unification eligibility requirements, and based on their positions on the section 8 waiting list;

(b) Determine if families referred by the PCWA are eligible for section 8 assistance, and place eligible families on the section 8 waiting list based on the date of the families's applications and any preferences for which the families qualify;

(c) Amend the administrative plan and equal opportunity housing plan to provide for rental assistance to Family Unification eligible families in a number equal to the rental certificates provided by HUD for this purpose, and provide for the opening of closed waiting lists to add applicants when necessary;

(d) Administer the rental assistance in accordance with applicable program regulations and requirements; and

(e) Assure the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, and submit with the application a certification that the HA will cooperate with and provide requested data to the HUD office responsible for program evaluation.

The HA must review its waiting list to determine if there are any families already on its waiting list (including families in the PCWA caseload) who may be eligible for the Family Unification program. A family must be certified by the PCWA as a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the discharge of a child, or children, to the family from out-of-home care. The names of Family Unification eligible families can be mutually shared between the HA and the PCWA. Families admitted to participate in the Family Unification Program must be selected in order based on their positions on the section 8 waiting list after the PCWA determines they are eligible for the Family Unification Program and the HA determines they are eligible for the section 8 program.

Any HA with a closed waiting list is required to advertise the opening of its waiting list before accepting new applicants for this demonstration program. The advertisement and opening of the waiting list may be limited to applications from Family Unification eligible families. For administrative convenience, an HA may limit the number of applications taken in response to an advertisement.

(3) Public Child Welfare Agency (PCWA) Responsibilities. Public child welfare agencies are responsible for:

(a) Providing written certification to the HA that a family qualifies as a Family Unification eligible family, under the eligibility requirements described in Section II(A)(1)(a) of this NOFA;

(b) Establishing and implementing a system to identify Family Unification eligible families within the agency's caseload and reviewing referrals from the HA;

(c) Committing sufficient staff resources to ensure that Family Unification eligible families are identified and the PCWA certification process based on the criteria in Section II(A) of this NOFA is completed in a timely manner; and

(d) Assuring the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, and submitting a certification with the application that the PCWA will agree to cooperate with and provide requested data to the HUD office having responsibility for program evaluation.

(4) Federal Preference. To participate in the Family Unification Demonstration Program, a family must be a Family Unification eligible family as defined in Section II(A)(1) of this NOFA. Generally, most families eligible for the Family Unification Demonstration Program will qualify for a Federal preference. However, if an HA selects a family without a Federal preference for its Family Unification Demonstration Program, but has skipped over a family with a Federal Preference, the selected family will count against the HA's 10 percent authority to select non-Federal preference holders.

(5) Section 8 Rental Certificate Assistance. The Family Unification Demonstration Program provides assistance under the section 8 rental assistance programs. Although HUD is providing a special allocation of rental certificates, the HA may use both rental vouchers and certificates to assist families under this demonstration program. HAs must administer this demonstration program in accordance with HUD's regulations governing the section 8 rental certificate and rental voucher programs, codified at 24 CFR part 882 and 24 CFR part 887. The HA may issue a rental voucher to a family selected to participate in the Family Unification Program if the family requests a rental voucher and the HA has one available. If section 8 assistance for a family under this demonstration is terminated, the rental assistance must be reissued to another Family Unification eligible family during the five-year term of the ACC for the section 8 rental certificates provided under this demonstration.

*(B) Selection Criteria/Ranking Factors*

To provide each applicant HA with a fair and equitable opportunity to receive an award of rental certificates for the Family Unification Demonstration Program during FY 1993, HUD will use the three objective selection criteria listed below to rate all applications found acceptable for further processing.

(1) Selection Criterion 1: HA Administrative Capability (30 points)—

(a) Description: Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), portability of rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements is either excellent or good. For purposes of this NOFA, an HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, the Field Office/Indian Programs Office will rate HA administration of the Public or Indian Housing Program.

(b) Rating: *16–30 points.* Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing) as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings (unless Office of Inspector General recommendation has been appealed by Field Office, Indian Programs Office or Regional Office); the HA is complying with the portability requirements under the rental voucher and rental certificate programs; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet housing quality standards (HQS) or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless Field Office/Indian Programs Office documents that September 30, 1992, report was not reflective of HA performance;

*1–15 points.* Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; the Field Office is aware of some problems with HA administration of portability (e.g., not responding to billing promptly); not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for Public/Indian Housing units) under ACC for one year or more was at least 85 percent as of September 30, 1992, unless the Field Office/Indian Programs Office documents that the September 30, 1992, report is not reflective of HA performance.

*0 points.* If neither of the above statements apply, assign 0 points.

(2) Selection Criterion 2: Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families (30 points)—

(a) Description: The application describes the method that the HA and the public child welfare agency will use to identify and assist Family Unification eligible families.

(b) Rating: *16–30 points.* A letter of intent from the PCWA indicating its commitment to provide resources and support for the program is included with the HA application. The PCWA letter of intent and other information provided is comprehensive and includes an explanation of the method used to identify eligible families, of the PCWA's certification process for determining eligible families based on the criteria in Section II(A) of this NOFA, of the responsibilities of each agency, of the PCWA assistance provided to families in locating housing units, of the PCWA staff resources committed to the program, of the past PCWA experience administering a similar program, and of the PCWA/HA cooperation in administering a similar program.

*1–15 points.* The information provided is general and includes a discussion of the method and process used to identify and assist eligible families.

*0 points.* The information provided is either not coherent or fails to include an explanation of the method and process used to identify and assist eligible families. Proposed administration of program is not consistent with program regulations.

(3) Selection Criterion 3: Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program (20 points)—

(a) Description: The application must describe the need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care, or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency.

(b) Rating: *11–20 points.* The PCWA has adequately demonstrated that there is a need in the HA's jurisdiction for the Family Unification Demonstration which is not being met through existing programs. The narrative includes specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families lacking adequate housing.

*1–10 points.* The PCWA has provided a general narrative describing a need for the Family Unification demonstration in the HA's jurisdiction.

*0 points.* There is no need, or the PCWA has not adequately demonstrated the need for the number of certificates requested in the application.

*(C) Application Processing*

The HUD Field Office/Indian Programs Office and the Regional Office of Public Housing are responsible for rating the applications, and HUD Headquarters is responsible for ranking and selection of applications (including applications rated by the Indian Programs Office) which will receive assistance under the Family Unification Demonstration Program. The Field Office/Indian Programs Office will initially screen all applications, using the "Checklist for Technical Requirements" listed in Section IV(B) of this NOFA as a guide to determine if an application is complete.

*(D) Selection Process*

After the Field Office or Indian Programs Office has screened HA applications and disapproved any applications unacceptable for further processing (see Section III of this NOFA), the Field Office or Indian Programs Office will review and rate all approvable applications, utilizing the selection criteria and point assignments listed in this NOFA. All scored applications and rating sheets in each Field Office and Indian Programs Office will be sent to the Regional Office. The Indian Programs Office will send each application to the Regional Office that has jurisdiction over the State in which the Indian Housing Authority is located.

In order to ensure that rating is consistent among the Field Offices within its region, the Regional Office of Public Housing will review and may re-rate these applications, utilizing the same selection criteria and point assignments listed in this NOFA.

The Regional Office of Public Housing must send to HUD Headquarters the Field Office and/or Indian Programs Office rating sheets, and the Regional Office rating sheets. Headquarters may review and re-rate these applications, utilizing the same selection criteria and point assignment listed in this NOFA. Headquarters will fund the highest rated applications until the rental certificate funds are insufficient to fund the next highest rated application(s). In the event of tie scores, HUD Headquarters will rank tied applications on the basis of selection criteria 2—coordination between HA and Public Child Welfare Agency to identify and assist eligible families.

When remaining rental certificate funds are insufficient to fund the next highest scoring application(s) in full, HUD Headquarters may fund that application(s) to the extent of the number of units available. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

*(E) Local Government Comments*

The Field Office will obtain "section 213" comments, in accordance with 24 CFR part 791, subpart C, from the unit of general local government. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

## III. Checklist of Application Submission Requirements

*(A) Application Requirements*

(1) Form HUD–52515. An Application for Existing Housing, Form HUD–52515, must be completed in accordance with the rental certificate program regulations. A copy of Form HUD 52515 is attached to this notice [Attachment 1], and can be obtained from the local HUD Field Office/Indian Program Office.

All the items in this Section III must be included in the application submitted to the HUD Field Office/Indian Programs Office. The application must include an explanation of how the application meets, or will meet, Selection Criteria 2 and 3. The PCWA serving the jurisdiction of the HA is responsible for providing the information for Selection Criterion 3, "Need for Family Unification Demonstration Program," to the HA for submission with the HA application. A State-wide PCWA must provide information on Selection Criteria 3 to all HAs that request data, otherwise, HUD will not consider applications from any HAs with the PCWA as a participant in its program. The HA must state in its cover letter to the application whether it will accept a reduction in the number of units and the minimum number of units it will accept since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of units requested.

(2) Certification Regarding Drug-Free Workplace. The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with CFR part 24, subpart F [see Attachment 2].

(3) Certification Regarding Lobbying. Section 319 of the Department of the

Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these lobbying restrictions are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL).

To assist HAs, the text for the Certification Regarding Lobbying [Attachment 3] and "Disclosure Form to Report Lobbying" (SF–LLL) [Attachment 4] are attached to this announcement. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(4) Form HUD–2880. A Form HUD–2880 (Applicant/Recipient Disclosure/Update Report) [Attachment 6] must be completed in accordance with subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance. (See Section V(D) of this NOFA.)

(5) Evaluation Certifications. The HA and the PCWA in separate certifications must state that the HA and PCWA agree to cooperate with HUD and provide requested data to the HUD office designated responsibility for the program evaluation.

(6) Single Audit Act Certification. The HA must submit the Single Audit Act Certification [Attachment 5] in accordance with the Single Audit Act, and HUD's regulations at 24 CFR part 44.

*(B) Checklist for Technical Requirements*

The checklist for technical requirements provided in this Section specifies the information that must be included in the application. HAs are encouraged to review the checklist to ensure that the application submitted is complete.

Checklist for Technical Requirements

The following checklist specifies the required information which must be submitted in the joint application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST

| HA | | Field office | | |
|---|---|---|---|---|
| Yes | No | Yes | No | |
| ☐ | ☐ | ☐ | ☐ | 1. The application contains a cover letter stating the *total* number of rental vouchers or rental certificates requested in the application and indicates whether the applicant is willing to accept a reduced number and the minimum number of units the applicant is willing to accept. |
| ☐ | ☐ | ☐ | ☐ | 2. The application includes form HUD 52515 and the monthly adjusted income (see section H of HUD 52515) by bedroom size for which the HA has submitted an application. |
| ☐ | ☐ | ☐ | ☐ | 3. The application demonstrates that the applicant qualifies as an HA and is legally qualified and authorized to participate in the rental assistance programs for the area in which the program is to be carried out. Such demonstration includes (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office, they do not have to be resubmitted. |
| ☐ | ☐ | ☐ | ☐ | 4. The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified. |
| ☐ | ☐ | ☐ | ☐ | 5. The application contains the HA schedule of leasing which must provide for the expeditious leasing of units. In developing the schedule, an HA must specify the number of units that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD. |
| ☐ | ☐ | ☐ | ☐ | 6. The application contains a narrative explaining how the application meets Selection Criterion 2, Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families. |
| ☐ | ☐ | ☐ | ☐ | 7. The application contains the Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program, Selection Criterion 3. |
| ☐ | ☐ | ☐ | ☐ | 8. The application contains an evaluation certification from the HA and from the PCWA. |

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT, AND COMPLIANCE WITH THE SINGLE AUDIT ACT

| HA | | Field office | | |
|---|---|---|---|---|
| Yes | No | Yes | No | |
| ☐ | ☐ | ☐ | ☐ | The application meets HUD's drug-free workplace requirement set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace [Attachment 2].) |
| ☐ | ☐ | ☐ | ☐ | The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. To comply, HAs must submit an Anti-Lobbying Certification [Attachment 3] and if warranted, a Disclosure of Lobbying Activities [Attachment 4]. |
| ☐ | ☐ | ☐ | ☐ | The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR 44; or OMB Circular No. A–133. To comply, HAs must submit a Single Audit Act Certification (Attachment 5). HAs who are not currently in compliance with the audit requirements will not be eligible for funding. |

**IV. Corrections to Deficient Applications.**

*(1) Acceptable Applications*

To be eligible for processing, an application must be received by the Field Office/Indian Programs Office no later than the application submission deadline date and time specified in this NOFA. The Field Office/Indian Programs Office will screen all applications and notify HAs of technical deficiencies by letter. Allowable corrections relate only to technical items, as determined by HUD, which do not improve the substantive quality of the application relative to the ranking factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3 p.m. local time on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

All HAs are encouraged to review the "Checklist for Technical Requirements" provided in Section III of this NOFA. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 882.204(a) and this notice, including the drug-free workplace certification and the antilobbying certification disclosure requirements, after the 14-day technical deficiency correction period, will be rejected.

*(2) Unacceptable Applications*

(a) After the 14-calendar day technical deficiency correction period (refer to Section III(C)(1) of this NOFA, Corrections to Deficient Applications, of this NOFA), if any, the Field Office/Indian Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section IV , Checklist of Technical Requirements, of this NOFA). The Field Office/Indian Programs Office notification of rejection letter must state the basis for the decision.

(b) Applications that fall into any of the following categories will not be processed:

(i) The Department of Justice has brought a civil rights suit against the applicant HA and the suit is pending;

(ii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iii) HUD has deferred application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (see 24 CFR 1.8), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (see 24 CFR 8.57).

(iv) The HA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its rental certificate, rental voucher, or moderate rehabilitation programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(v) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent.

(vi) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

(vi) The HA is not in compliance with the Single Audit Act (31 U.S.C. 7501–7507), OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44, or OMB Circular No. A–133, as applicable.

**V. Other Matters**

*(A) Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*(B) Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effect on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA does not alter the established roles of HUD, the States and local governments, including HAs.

*(C) Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies contained in these guidelines may have a significant impact on the maintenance and general well-being of some families. The Family Unification demonstration can be expected to provide additional decent and sanitary housing for very low-income families with children who seek to maintain the family unit. Since the impact on the family is considered beneficial, no further review under the order is necessary.

*(D) Accountability in the Provision of HUD Assistance*

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) *Documentation and Public Access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16,

1992 (57 FR 1942), for further information on these requirements.)

(2) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

*(E) Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

*(F) Prohibition Against Lobbying of HUD Personnel*

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

*(G) Prohibition Against Advance Information on Funding Decisions*

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4, and was amended by an interim rule published in the **Federal Register** on August 4, 1992 (57 FR 34246). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: June 22, 1993.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

# Application for Existing Housing

Section 8 Housing Assistance Payments Program

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

Attachment 1

Send the original and two copies of this application form and attachments to the local HUD Field Office

OMB Approval No. 2577-0169 (exp.9/30/95)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0169), Washington, D.C. 20503. Do not send the completed form to either of these addresses.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for:
How many Certificates? | How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
for Section 8 Certificates? ☐ ☐
for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application | Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

**A. Primary Area(s)** from which families to be assisted will be drawn.

| **Locality** (city, town, etc.) | **County** | **Congressional District** | **Units** |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**B. Proposed Assisted Dwelling Units**

| **Housing Program** | **Number of Dwelling Units by Bedroom Count** | | | | | | | | | **Total Dwelling Units** |
|---|---|---|---|---|---|---|---|---|---|---|
| | Elderly, Handicapped, Disabled | | | Non-Elderly | | | | | | |
| | Efficiency | 1-BR | 2-BR | 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6+BR | |
| Certificates | | | | | | | | | | |
| Housing Vouchers | | | | | | | | | | |

**C. Need for Housing Assistance.** Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community (If additional space is needed, add separate pages.)

| **D. Qualification as a Public Housing Agency.** Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check * the appropriate boxes) | **Submitted with this application** | **Previously submitted** |
|---|---|---|
| 1. The relevant enabling legislation | | |
| 2. Any rules and regulations adopted or to be adopted by the agency to govern its operations | | |
| 3. A supporting opinion from the Public Housing Agency Counsel | | |

Retain this record for the term of the ACC.
Previous editions are obsolete



* form **HUD-52515** (7/88)
ref. handbook 7420.3

**E. Financial and Administrative Capability.** Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

**F. Housing Quality Standards.** Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

**G. Leasing Schedule.** Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

**H. Average Monthly Adjusted Income** (Housing Vouchers Only)

| Efficiency | 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6+BR |
|---|---|---|---|---|---|---|
| | | | | | | |

**I. Attachments.** The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

| | Submitted with this application | To be submitted | Previously submitted |
|---|---|---|---|
| 1. Equal Opportunity Housing Plan | | | |
| 2. Equal Opportunity Certifications, Form HUD-916 | | | |
| 3. Estimates of Required Annual Contributions, forms HUD-52672 and HUD-52673 | | | |
| 4. Administrative Plan | | | |
| 5. Proposed Schedule of Allowances for Utilities and Other Services, form HUD-52667, with a justification of the amounts proposed | | | |

**HUD Field Office Recommendations**

| Recommendation of Appropriate Reviewing Office | Signature and Title | Date |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Attachment 2

**Certification Regarding Drug-Free Workplace Requirements**
**(From 24 CFR, Appendix C)**
**Instructions for Certification**

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

**Alternate I**

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about -

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted -

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

**Alternate II**

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

Attachment 3

## Certification Regarding Lobbying

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.) Attachment 4

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>For Material Change Only:<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known:*<br><br>Congressional District, *if known:* | Congressional District, *if known:* |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, *if applicable:* _____ |
| 8. Federal Action Number, *if known:* | 9. Award Amount, *if known:*<br>$ |
| 10. a. Name and Address of Lobbying Entity<br>*(if individual, last name, first name, MI):* | b. Individuals Performing Services *(including address if different from No. 10a)*<br>*(last name, first name, MI):* |

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

| 11. Amount of Payment *(check all that apply)*: | 13. Type of Payment *(check all that apply)*: |
|---|---|
| $ _____ ☐ actual ☐ planned | ☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment *(check all that apply)*:<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

Attachment 5

Certification Regarding Single Audit Act

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act (31 U.S.C. 7501-7507), OMB Circular No. A-128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A-133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

# Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

Attachment 6

OMB Approval No. 2525-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

**Part I Applicant/Recipient Information** Indicate whether this is an Initial Report ☐ or an Update Report ☐

1 Applicant/Recipient Name, Address, and Phone (include area code) | Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

| 3. Assistance Requested/Received | 4. HUD Program | 5. Amount Requested/Received $ |
|---|---|---|
| | | |

**Part II. Threshold Determinations -- Applicants Only**

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

**Part III. Other Government Assistance Provided/Requested**

| Department/State/Local Agency Name and Address | Program | Type of Assistance | Amount Requested/Provided |
|---|---|---|---|
| | | | |

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____



form HUD-2880 (1/92)
ref. Sec: 102, HRA 1989; PL 101 - 235

**Part IV. Interested Parties**

| Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first) | Social Security Number or Employee ID Number | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Part V. Report on Expected Sources and Uses of Funds

| Source |
| --- |
| |

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

| Use |
| --- |
| |

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

| Signature | Date |
| --- | --- |
| | |

**Public reporting burden** for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

**Note:** This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

**Instructions** (See Note 1 on last page.)

**I. Overview.** Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

**A. Applicant disclosure (initial) reports: General.** All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

**B. Update reports: General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

**C. Applicant disclosure reports: Specific guidance.** The applicant must complete all parts of this disclosure form if **either** of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) **Note:** There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

**D. Update reports: Specific guidance.** During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

**II. Line-by-Line Instructions.**

**A. Part I. Applicant/Recipient Information.**

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

**B. Part II. Threshold Determinations — Applicants Only**

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

**C. Part III. Other Government Assistance.**

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

**D. Part IV. Interested Parties.**

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

**5. Part V. Report on Sources and Uses of Funds.** This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee

FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated perodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.



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July 6, 1993

Part V

# Department of Health and Human Services

## Food and Drug Administration

21 CFR Part 870

**Cardiovascular Devices; Effective Date of Requirement for Premarket Approval of Nonroller-Type Cardiopulmonary Bypass Blood Pump; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 870**

**[Docket No. 93M-0150]**

## Cardiovascular Devices; Effective Date of Requirement for Premarket Approval of Nonroller-Type Cardiopulmonary Bypass Blood Pump

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

**ACTION:** Proposed rule; opportunity to request a change in classification.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the nonroller-type cardiopulmonary bypass (CPB) blood pump, a medical device. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from use of the device. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of the device based on new information.

**DATES:** Written comments by September 7, 1993; requests for a change in classification by July 21, 1993. FDA intends that if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

**ADDRESSES:** Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Bette L. Lemperle, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1053.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or notice of completion of a PDP until 90 days after FDA promulgates a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device.

Section 515(b)(2)(A) of the act provides that a proceeding to promulgate a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). FDA has in the past requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for nonroller-type CPB blood pumps.

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." (H. Rept. 94-853, 94th Cong., 2d sess. 42 (1976).)

*A. Classification of the Nonroller-type CPB Pump*

In the **Federal Register** of February 5, 1980 (45 FR 7959), FDA issued a final rule (§ 870.4360 (21 CFR 870.4360)) classifying the nonroller-type CPB blood pump into class III. The preamble to the proposal to classify the device published in the **Federal Register** of March 9, 1979 (44 FR 13409), included the recommendation of the Circulatory Support Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel recommended that the device be in class III (premarket approval) for all uses. The Panel believed that a performance standard would not provide reasonable assurance of the safety and effectiveness of this device and that there was insufficient information to establish such a standard. The Panel stated that the device is life supporting and life sustaining and is potentially hazardous to life or health even when properly used. Because it is a part of the CPB circuit and is used in a surgical clinical environment excessive leakage current can be a serious hazard. Because it is in a system with other devices, it may be hazardous if not adequately assembled, used, or maintained.

In the **Federal Register** of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval for 31 class III preamendments devices. Among other things, the notice described the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. The nonroller-type CPB blood pump was not included in the list of devices identified in that notice. However, using those factors, FDA has determined that the nonroller-type CPB blood pump identified in § 870.4360 has a high priority for initiating a proceeding to require premarket approval because its safety, effectiveness and clinical utility have not been established by valid scientific evidence as defined in § 860.7 (21 CFR 860.7). Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the nonroller-type CPB blood pump stimulator has an approved PMA or a PDP that has been declared completed.

*B. Dates New Requirements Apply*

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the nonroller-type CPB blood pump within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the nonroller-type CPB blood pump during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any nonroller-type CPB blood pump which is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the nonroller-type CPB blood pump is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

*C. Description of Device*

A nonroller-type CPB blood pump is a device that uses a method other than revolving rollers to pump blood through a CPB circuit during bypass surgery. There are several types of these pumps available, all of which can be divided into two categories: Pulsatile flow pumps and nonpulsatile flow pumps. Pulsatile pumps may be of a diaphragmatic, pneumatic, piston, bellows, or bar compression design. A nonpulsatile pump is generally of the centrifugal flow design.

The proposed rule to require premarket approval of nonroller-type CPB blood pumps applies only to the nonroller-type CPB blood pumps identified above that were being commercially distributed before May 28, 1976, and to devices introduced or proposed for introduction into commercial distribution since that date that are substantially equivalent to the nonroller-type CPB blood pumps. FDA considers use or promotion of the device for any other indication, including extracorporeal membrane oxygenation for periods greater than 6 hours, for ventricular support to assist in weaning a patient from CPB, and to provide circulatory assist for heart transplant candidates until a donor heart is found (bridge to transplant), to be investigational. Consequently, any nonroller-type CPB blood pump labeled, promoted, or otherwise intended to be used for any purpose other than for short term use to pump blood through a CPB circuit during surgery, is not subject to this proposal, but rather is already required to have in effect an approved PMA or IDE.

*D. Proposed Finding With Respect to Risks and Benefits*

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the nonroller-type CPB blood pump to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

*E. Risk Factors*

1. Alteration in blood composition

It is essential that the flow characteristics, materials, surface finish, and cleanliness of the device do not promote blood component trauma. Resulting complications associated with these features could include bleeding, hemolysis, thrombus formation, and complement activation. Improper mechanical design of the device can also result in such complications (Refs. 1, 2, 4 through 8, 26, and 27).

2. Inadequate tissue perfusion

If the design of the pump is improper, or the pump is unable to pump blood adequately through a CPB circuit,

inadequate organ perfusion can result. The literature identified associated adverse effects such as intra-abdominal complications, and liver and cerebral dysfunction (Refs. 9 through 17, 20, 22, 23, and 27).

3. Embolism

Improper design of the device may cause the generation of gaseous, particulate, or thrombotic embolisms, which may be debilitating or fatal (Refs. 26 and 28).

4. Retrograde perfusion

When the pump stops, due to electrical or pump failure, retrograde flow can result, pulling air into the aorta through holes from needles or around the pursestring sutures (Ref. 25).

5. Duration of use

Frequency and severity of adverse effects may be related to duration of use (Refs. 9, 11, 14, 20, and 22).

F. *Benefits of the Device*

Investigators who have studied the effectiveness of using nonroller-type cardiopulmonary blood pumps during CPB have reported varying results. The majority of the literature published in the English language regarding use of this device for CPB is an assortment of anecdotal commentary, uncontrolled studies, and technical reviews focusing on only a few variables associated with CPB.

Most of the scientific studies reviewed by FDA contained insufficient information regarding their protocol and design. Most of the studies failed to satisfy one or more of the minimum design requirements under § 860.7 for a valid scientific study. These requirements include adequate controls, randomization, followup data, and reliable evaluation criteria. After an extensive literature search, FDA identified only one study in which some type of prospective, randomized, controlled design was employed that would be appropriate to evaluate the safety, efficacy, and clinical utility of a nonroller-type CPB pump.

This study (Ref. 1) was designed to evaluate many of the variables associated with CPB that influence outcome. In that study, Jakob et al. (Ref. 1) conducted a prospective, randomized, clinical trial with 50 coronary artery bypass graft patients. The patients were randomly assigned to one of two groups, each with an identical CPB circuit except for the pump. In one group a centrifugal pump was used in the CPB bypass circuit, and in the other group a roller pump was used in the CPB circuit. The study, however, did not evaluate the effects of the nonroller-type CPB pump on the function of all vital organs. Rather, the study focused on the evaluation of blood components and time on bypass.

The remainder of the studies consisted of isolated case reports (Refs. 8 through 10, 15, and 17), studies in which only one type of CPB pump was used (Refs. 4, 7, 12, 15, 16, 22, and 23), studies in which the type of CPB pump was not identified (Refs. 2, 5, 6, 8 through 11, 13, 14, and 18 through 21), and studies in which the number of variables that were studied was limited (Ref. 2 and 4 through 23).

FDA has concluded from a review of the scientific literature that the safety, effectiveness, and clinical utility of nonroller-type CPB pumps for pumping blood through a CPB circuit during bypass surgery have not been established by valid scientific evidence as defined in § 860.7.

*G. Need for Information for Risk/Benefit Assessment of the Device*

FDA classified the nonroller-type CPB blood pump into class III because it determined that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has determined that the special controls that may now be applied to class II devices under the Safe Medical Devices Act of 1990 also would not provide such assurance. FDA has weighed the probable risks and benefits to the public health from the use of the device and believes that the literature reports and other information discussed above present evidence of significant risks associated with use of the device. These risks must be addressed by the manufacturers of nonroller-type CPB blood pumps. FDA believes that the nonroller-type CPB blood pumps should undergo premarket approval to establish effectiveness and to determine whether the benefits to the patient are sufficient to outweigh any risk.

## II. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified above, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known to the applicant that have not been identified in this document, (2) the effectiveness of the specific nonroller-type CPB blood pump that is the subject of the application, and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the nonroller-type CPB blood pump for its intended use. In addition to the basic requirements described in 21 CFR 814.20 (b)(6)(ii) for a PMA, it is recommended that such studies employ a protocol that meets the following criteria:

*A. General Protocol Requirements*

The nonroller-type cardiopulmonary blood pump must be evaluated in a prospective, randomized, controlled clinical trial that uses a roller pump as the control. The study must attempt to answer all of the general and specific questions about the safety, effectiveness, and clinical utility of the device, including the risk to benefit ratio, during coronary artery bypass graft surgery. These questions should relate to the pathophysiologic effects which the device produces as well as the primary and secondary variables analyzed to evaluate safety and effectiveness. Study endpoints and study success must be defined. Examples of questions to be answered include: What morbidity and mortality is associated with the subject device in the patient population and how does this compare to the control? How does the device affect the circulatory system and organ function? Does its performance meet expectations for homeostasis during the time that cardiac function was excluded? Appropriate rationale, supported by background literature on previous uses of the device and proposed mechanisms for its effect, should be presented as justification for the questions to be answered, and the definitions of study endpoints and success. Clear study hypotheses should be formulated based on this information. The use of a steering committee to develop the study protocol is encouraged. Members of the committee should include investigators, engineers, statisticians, and members of other pertinent health and scientific disciplines.

*B. Study Size*

A minimum of three institutions should participate in the study. The number of patients studied should relate

to statistical considerations in the study hypotheses, such as the anticipated difference in morbidity and mortality between the subject device and the control in the population at risk (i.e., coronary artery bypass or valve replacement patients) and the expected level of adverse effects. The components of the treatment and the control group bypass circuits should be exactly the same, identified by brand name, size, etc., with the only difference being the pump. It is anticipated that a study in which all three institutions use the exact same CPB circuit components and follow the identical protocol will be able to demonstrate statistically and clinically significant differences in the results with fewer patients than a study in which each institution uses a different circuit (varied configurations and brand names) and different procedures.

*C. Patient Inclusion and Exclusion Criteria*

Patient demographics and pertinent coronary artery bypass graft variables should be addressed. All variables that could confound the study results should be evaluated for inclusion or exclusion. Each criterion should be clearly defined to assure uniform application among institutions and investigators.

*D. Randomization*

After a determination is made that a patient meets the study inclusion and exclusion criteria, the patient should be randomly assigned to either the nonroller-type pump (study pump) or the roller-type pump (control pump). Assignment should be made by a central monitor who is not involved in patient management or data retrieval.

*E. Phases of the Study*

The study should consist of four phases: Enrollment, baseline, treatment, and followup. The protocol should discuss exactly what will happen during each phase (e.g., assignment to study and control groups, data to be collected, number of measurements, length of followup, etc.). and an algorithm(s) should be developed to guide study participants. Followup should extend for no less than 30 days after CPB.

*F. Data Collection*

There should be continuity between the questions to be answered in the study and the data to be collected. For example, the specific data points collected to demonstrate success (e.g., the effect of the device on the lungs and on the blood, etc.) should be specified, including the schedule for collection. If a specific test or evaluation is required (e.g., neurologic assessment) the specific test to be used must be identified in the protocol and the test measurements should be objective to allow for more powerful statistical analysis of the results. Protocols must be developed to assure such objectivity. Adverse effects must be defined to allow for uniform interpretation. The format used for recording the information should be provided in the protocol. Consideration should be given to the need for multiple measurements in each phase of the study to decrease the role of chance.

*G. Statistical Analysis Plan*

There should also be continuity between the questions to be answered in the study and the statistical analysis plan. The objective is to demonstrate statistical significance of the study hypotheses and other pertinent study variables. Statistical significance should be obtained at the level of a two tailed alpha of 0.05 and a minimum beta of 0.20 for each variable at each site. Nonparametric tests are frequently required when analyzing data because the basic assumptions for parametric tests can rarely be met. If the assumptions for a parametric test are fully met by the study such a test could be used. Data analysis, however, may involve more than the decision to use either parametric or nonparametric tests. If the prognostic variables are categorical, then categorical data analysis and possibly even the generalized linear model may be useful for statistical analysis.

*H. Clinical Analysis*

Study results should be evaluated from a clinical perspective. Rationale supported by data should be used as required to strengthen conclusions.

*I. Monitoring*

Rigorous monitoring is required to assure that study procedures are followed and that data are collected in accordance with the study protocol. Forceful monitors, who have appropriate credentials and who are not aligned with patient management or otherwise biased, contribute prominently to a successful study.

Applicants should submit any PMA in accordance with FDA's "Premarket Approval (PMA) Manual." This guideline is available upon request from FDA, Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 5600 Fishers Lane, Rockville, Maryland 20857.

## III. Request for Comments With Data

FDA is providing a 60-day period for interested persons to submit to the Dockets Management Branch (address above) written comments regarding this proposal and its findings. Two copies of any comments are to be submitted, except that individuals may submit one copy.

## IV. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of the nonroller-type CPB blood pump is to be in the form of a reclassification petition containing the information required by 21 CFR 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by July 21, 1993.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in 21 CFR 860.123(b)(1). If a timely request for a change in the classification of the nonroller-type CPB blood pump is submitted, the agency will, by September 7, 1993, after consultation with the appropriate FDA advisory committee and by an order published in the Federal Register, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

## V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Jakob, H. G. et al., "Routine Extracorporeal Circulation With a Centrifugal or Roller Pump," ASAIO transactions; 37:M487–M489, 1991.

2. Prasad, K. et al., "Increased Oxygen Free Radical Activity in Patients on Cardiopulmonary Bypass Undergoing Aortocoronary Bypass Surgery," *American Heart Journal*, 123(1):37–45, January 1992.

3. Westaby, S., "Complement and Damaging Effects of Cardiopulmonary Bypass," *Thorax*, 38(5):321–325, May 1983.

4. Chenoweth, D. E. et al., "Complement Activation During Cardiopulmonary Bypass, Evidence of Generation of C3a and C5a Anaphylatoxins," *New England Journal of Medicine*, 304(9):497–503, February 26, 1981.

5. Hamerschmidt, D. E. et al., "Complement Activation and Neutropenia Occurring During Cardiopulmonary Bypass," *Journal of Thoracic Cardiovascular Surgery*, 81:370–377, 1981.

6. Lum, G. et al., "Hypomagnesemia and Low Alkaline Phosphatase Activity in Patients' Serum After Cardiac Surgery," *Clinical Chemistry*, (35)4, pp. 664–667, 1989.

7. Chenoweth, D. E., "Complement Activation During Cardiopulmonary Bypass," in "Pathophysiology and Techniques of Cardiopulmonary Bypass," edited by J. R. Utley, Williams and Wilkins, Baltimore, MD, pp. 49–60, 1983.

8. Wolk, L. A. et al., "Changes in Antithrombin, Antilasmin, and Plasminogen During and After Cardiopulmonary Bypass," *American Surgeon*, 51(6):309–313, June 1985.

9. Leitman, I. M. et al., "Intra-abdominal Complications of Cardiopulmonary Bypass Operations," *Surgery Gynecology Obstetrics*, 165(3):251–4, September 1987.

10. Long, W. B., "Abdominal Complications of Cardiopulmonary Bypass," in "Pathophysiology and Techniques of Cardiopulmonary Bypass," edited by J. R. Utlely, Williams and Wilkins, Baltimore, MD, pp. 164–174, 1983.

11. Collins, J. D. et al., "Incidence and Prognostic Importance of Jaundice After Cardiopulmonary Bypass Surgery," *Lancet*, 1(8334):1119–1122, May 21, 1983.

12. Kreutzer, D. L. et al., "Characterization of the Anaphylatoxin Inactivator and Chemotactic Factor Inactivator Activities During Cardiopulmonary Bypass," *Journal of Experimental Pathology*, 1(3);183–187, Summer 1984.

13. Venditti, J. et al., "Metabolic Activity of the Lung During Cardiopulmonary Bypass," *Journal of Medicine*, 17(2);65–85, 1986.

14. Reed, G. L. et al., "Stroke Following Coronary-Artery Bypass Surgery," *New England Journal of Medicine*, 319(19):1246–1250, November 10, 1988.

15. Soma, Y. et al., "Clinical Results of Cardiopulmonary Bypass With Selective Cerebral Perfusion for Aneurysm of the Ascending Aorta and the Aortic Arch," *Annals of Thoracic Surgery*, 32(1):63–67, July 1981.

16. Govier, A. V. et al., "Factors and Their Influence on Regional Cerebral Blood Flow During Nonpulsatile Cardiopulmonary Bypass," *Annals of Thoracic Surgery*, 38(6):592–600, December 1984.

17. Hall, L. T., "Recovery From Coma That Results as a Complication of Cardiac Arrest Followed by Cardiopulmonary Bypass," *Heart and Lung*, 18(6)559–64, November 1989.

18. Rogers, A. T. et al., "Cerebrovascular and Cerebral Metabolic Effects of Alterations in Perfusion Flow Rate During Hypothermic Cardiopulmonary Bypass in Man," *Journal of Thoracic Cardiovascular Surgery*, 103(2):363–368, February 1992.

19. Sadler, P. D., "Incidence, Degree, and Duration of Postcardiotomy Delirium," *Heart and Lung*, 10:1084, 1981.

20. Quinless, F. W. et al., "The Effect of Selected Preoperative, Intraoperative, and Postoperative Variables on the Development of Postcardiotomy Psychosis in Patients Undergoing Open Heart Surgery," *Heart and Lung*, 14:334, 1985.

21. Greeley, W. J. et al., "Effects of Cardiopulmonary Bypass on Cerebral Blood Flow in Neonates, Infants, and Children," *Circulation*, 80(3 Pt 1):I209–215, September 1989.

22. Carella, F. et al., "Cerebral Complications of Coronary Bypass Surgery, A Prospective Study," *Acta. Neurological Scandinavica*, 1988, 158–163, February 1977.

23. Alston, R. P. et al., "Changes in Hemodynamic Variables During Hypothermic Cardiopulmonary Bypass," *Journal of Thoracic Cardiovascular Surgery*, 100(1):134–44, July 1990.

24. Mandl, J. P. et al., "Comparison of Emboli Production Between a Constrained Force Vortex Pump and a Roller Pump," AmSECT Proceedings, 27–31, 1977.

25. Kolff, J. et al., "Beware Centrifugal Pumps: Not a One-Way Street, But a Potentially Dangerous Siphon," *Annals of Thoracic Surgery*, 50(3):512, September 1990.

26. Furst, E., "Extracorporeal Blood Pumping During Heart-Lung Bypass," *Journal of Cardiovascular Nursing*, 3(3):71–76, May 1989.

27. Weiland, A. P. et al., "Physiologic Principles and Clinical Sequelae of Cardiopulmonary Bypass," *Heart and Lung*, 15(1):34–39, January 1986.

28. FDA MDR database.

## VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VII. Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and finds that this proposal would not be a major rule as specified in the Order. The agency believes that only a small number of firms will be affected by this proposed rule, and the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

## VIII. Comments

Interested persons may, on or before September 7, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before July 15, 1993, submit to the Dockets Management Branch a written request to change the classification of the nonroller-type CPB blood pump. Two copies of any request are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

## PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 is revised to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 870.4360 is amended by revising paragraph (c) to read as follows:

**§ 870.4360 Nonroller-type cardiopulmonary bypass blood pump.**

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (insert date to be 90 days after the effective date of a final rule based on this proposed rule), for any nonroller-type cardiopulmonary bypass blood pump that was in commercial distribution before May 28, 1976, or that has on or before (insert date 90 days after the effective date of a final rule based on this proposed rule), been found to be substantially equivalent to the nonroller-type cardiopulmonary bypass blood pump that was in commercial distribution before May 28, 1976. Any

other nonroller-type cardiopulmonary bypass blood pump shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: May 6, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–15870 Filed 7–2–93; 8:45 am]

BILLING CODE 4160–01–F

federal register

Tuesday
July 6, 1993

Part VI

# Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Airspace Designations; Incorporation By Reference; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 27342; Amdt. 71–20]

## Airspace Designations; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9A, Airspace Designations and Reporting Points. This action also explains how the FAA will amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

EFFECTIVE DATE: These regulations are effective September 16, 1993. The incorporation by reference of FAA Order 7400.9A is approved by the Director of the Federal Register as of September 16, 1993, through September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Webb, Airspace and Obstruction Evaluation Branch, (ATP–240), Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9232.

SUPPLEMENTARY INFORMATION:

### Background

FAA Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, listed the airspace descriptions for all jet routes, area high routes, Federal airways, control areas, control area extensions, area low routes, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, and reporting points. FAA Order 7400.9, Airspace Reclassification, dated November 1, 1991, and effective September 16, 1993, listed Class A, Class B, Class C, Class D, and Class E airspace areas. Due to the large number and frequent revision of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in Federal Aviation Regulations (FAR) § 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference in § 71.1 of FAA Order 7400.7A as of November 27, 1992, through September 15, 1993, and Order 7400.9 effective as of September 16, 1993, through September 15, 1994. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.7A and Order 7400.9 in full text as proposed rule documents in the Federal Register. Likewise, all amendments of these listings were published in full text as final rules in the Federal Register. This rule reflects the periodic integration of these final rule amendments into a revised edition of both orders 7400.7A and 7400.9 into a new order, Airspace Designations and Reporting Points, FAA Order 7400.9A. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9A in § 71.1 as of September 16, 1993, through September 15, 1994. This rule also explains how the FAA will amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also changed to update the incorporation by reference of FAA Order 7400.9A in place of FAA Order 7400.9.

### The Rule

This action amends part 71 of the Federal Aviation Regulations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9A effective September 16, 1993, through September 15, 1994. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9A in full text as proposed rule documents in the Federal Register. Likewise, all amendments of these listings will be published in full text as final rules in the Federal Register. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, effective September 16, 1993, as follows:

## PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

### § 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993. This incorporation by reference was approved by the Director the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9A is effective September 16, 1993, through September 15, 1994. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the Federal Register. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the Federal Register. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9A may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485 Copies of FAA Order 7400.9A may be inspected in Docket No. 27342 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, room 915G, 800 Independence Avenue, SW., Washington, DC weekdays between 8:30 a.m. and 5 p.m., or at the Office of the Federal Register, 800 North Capitol

Street, NW., suite 700, Washington, DC. This section is effective September 16, 1993, through September 15, 1994.

**§ 71.5 [Amended]**

3. Section 71.5 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

**§ 71.31 [Amended]**

4. Section 71.31 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

**§ 71.41 [Amended]**

5. Section 71.41 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

**§ 71.51 [Amended]**

6. Section 71.51 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

**§ 71.61 [Amended]**

7. Section 71.61 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

**§ 71.71 [Amended]**

8. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A" in each paragraph.

**§ 71.79 [Amended]**

9. Section 71.79 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

**§ 71.901 [Amended]**

10. Paragraph (a) of § 71.901 is amended by removing the words "FAA Order 7400.9" and inserting, in their place, the words "FAA Order 7400.9A."

Issued in Washington, DC, on June 25, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93–15805 Filed 7–2–93; 8:45 am]

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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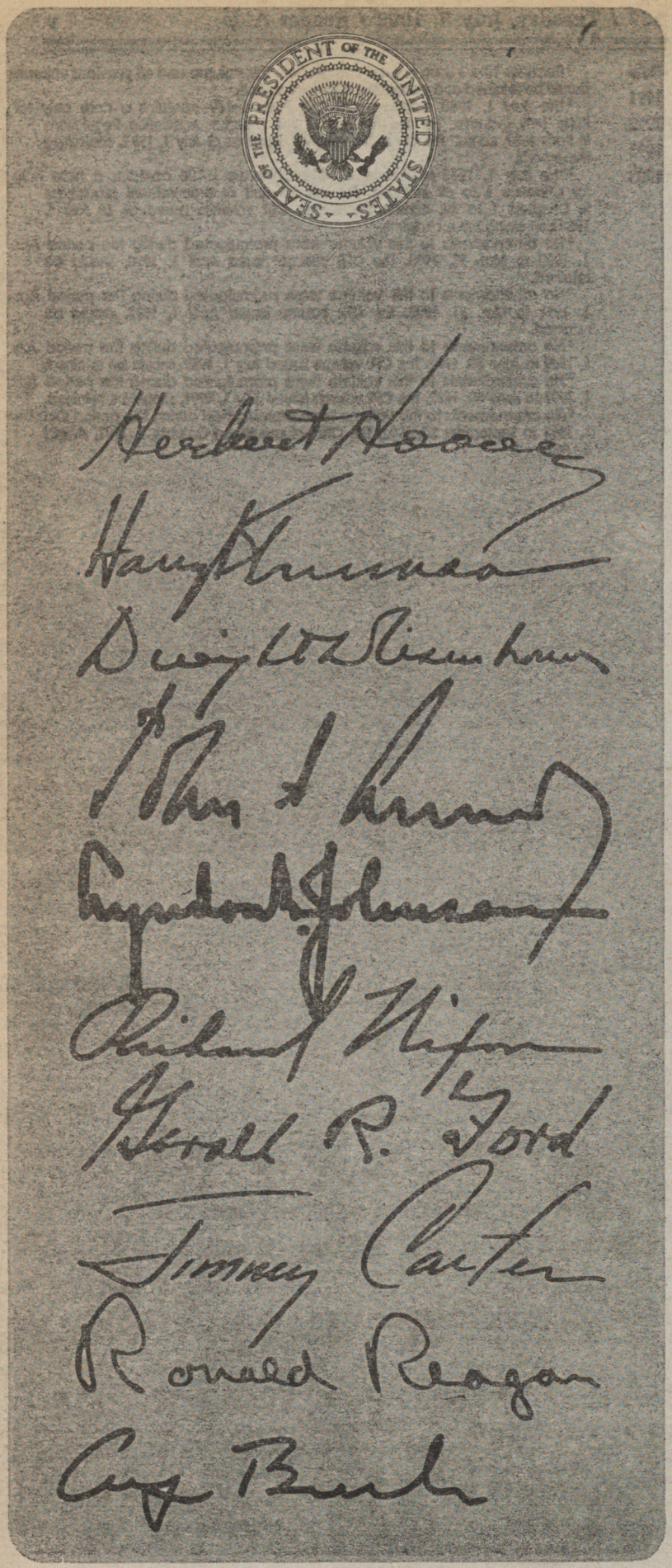
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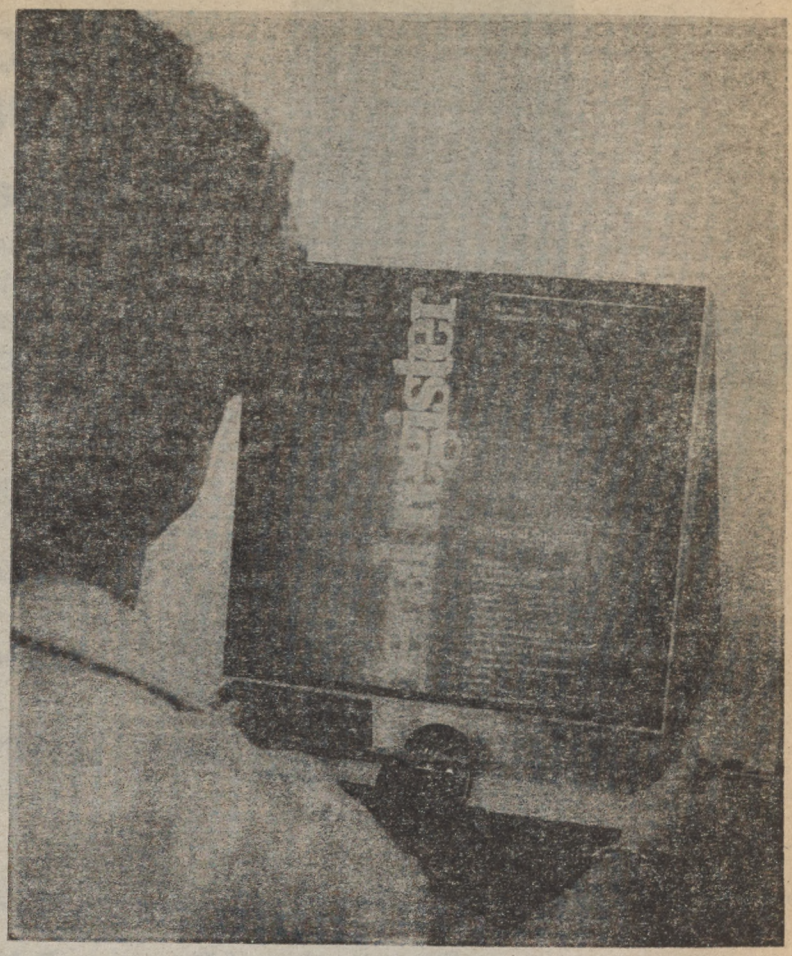
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